Supreme Court, U.S.
FILED

NO. 94 213 JUL 27 1994

OFFICE OF THE CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1994

THOMAS A. MOORE, M.D.
Plaintiff-Petitioner

versus

BRENDA KELGER, ET AL
Defendant-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX VOLUME I

Thomas A. Moore, M.D.
Pro Se
502 Barrow St.
Houma, LA 70360
Telephone (504) 876-2222

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

102 pp

TABLE OF CONTENTS

Page

APPENDIX A - Complaint for Damages with Request for Jury Trial, January 29, 1992 ..... A-1

APPENDIX B - Memorandum to Substantiate Injury and Damages A-6

APPENDIX C - Minute Entry-Ruling of Judge Frederick Heebe, June 2, 1992 ..... A-41

APPENDIX D - Motion to Reconsider the Legality of Defendant's Entry into Plaintiffs Home, June 15, 1992 ..... A-50

APPENDIX E - Oral Statement in Support of Brief A-61

APPENDIX F - Minute Entry-Ruling of Judge Frederick Heebe, August 5, 1992 ..... A-64

APPENDIX G - Minute Entry-Ruling of Judge Frederick Heebe, March 26, 1993 ..... A-69

APPENDIX H - Affidavits A-81

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RECEIVED
JAN 29 '92

THOMAS A. MOORE, M.D. Plaintiff	)	
	)	
v.	)	ADVERSARY
	)	DOCKET NO. 92-0367
BRENDA FELGER, EUGENE NEPVEAUX, STEVE FANGUY, JOHN REEDY, MICHELLE BABIN, DINA BON-VILLAIN, ANGELA CAMILLE, TINA SAMANIE, CYRUS FANGUY, BILL ALGU, MACDUFFIE HERROD, DENISE ADAMS, HENRY McKINELL, JEFF DANIELS, ROBERT SINGLETON, REBEC-CA PATTON, JAMES M. VALENTINE, D. PHILLIP GUILLOT, LOUIS OUBRE, STEVENS MOORE, JILL ONDREJKO, AND JOE BURCHIS, Defendants	)	SECT. B. MAG. 6

A-2

COMPLAINT FOR DAMAGES WITH REQUEST FOR JURY TRIAL

The complainant, Thomas A. Moore, M.D., a resident citizen of Terrebonne Parish, Louisiana, appearing herein pro se, respectfully represents that:

1.

Brenda Felger, Steve Fanguy, John Reedy, Michelle Babin, Dina Bonvillain, Angela Camille, Tina Samanie, Cyrus Fanguy, Bill Algu, MacDuffie Herrod, Denise Adams, and Joe Burchis, on information and belief to be resident citizens of Terrebonne Parish, Louisiana; Eugene Nepveaux, on information and belief to be a resident citizen of Lafayette Parish, Louisiana; Henry McKinell, Jeff Daniels, Robert Singleton, and Rebecca Patton, on information and belief to be residents of East Baton Rouge Parish, Louisiana; James M. Valentine, D. Phillip Guillot, Louis Oubre, Stevens Moore, and Jill Ondrejko, on information and belief to be resident citizens of Orleans Parish, Louisiana, are made the defendants herein.

2.

At about 9:00 o'clock A.M. on March 29, 1990, defendant Felger accompanied by the other individual defendants illegally and unlawfully with force of arms entered complainant's home and place of abode in Terrebonne Parish, Louisiana within this District where they conducted a lengthy, exhaustive and destructive search of complainant's things, including his private books and papers, many of which they seized and carried away in con-

travention of the constitution and laws of the United States of America and of the State of Louisiana.

3.

In the alternative and in the event that this court should determine that the individual defendants' entry into his home and place of abode was lawful, the defendants exceeded the scope of the authority under which their entry was made in their lengthy, exhaustive and destructive search of complainant's things, including his private books and papers, many of which they seized and carried away in contravention of the constitution and laws of the United States of America and of the State of Louisiana.

4.

As a result of above described knowing, malicious, deliberate and intentional misconduct of the defendants and/or wilful and wanton misconduct of the defendants and/or grossly negligent misconduct of the defendants, and/or negligent misconduct of the defendants, your complainant sustained personal injuries in the form of severe emotional distress, anguish, stress, anxiety, insult, embarrassment, and humiliation. Additionally, your complainant sustained financial injury particularly but not limited to injury in the form of loss and damage to property, loss of earning power, loss of income, and attorney fees.

5.

Your complainant should recover compensation in the amount of One Million ($1.000.000.00) Dollars for per-

sonal injuries and One Million ($1,000,000.00) Dollars for proprietary damages,

WHEREFORE, your complainant prays that after all legal delays and due proceedings are had there be a judgment herein in favor of your complainant, Thomas A. Moore, M.D., and against the defendants Brenda Felger, Eugene Nepveaux, Steve Fanguy, John Reedy, Michelle Babin, Dina Bonvillain, Angela Camille, Tina Samanie, Byrus Fanguy, Bill Algu, MacDuffie Herrod, Denise Adams, Henry McKinell, Jeff Daniels, Robert Singleton, Rebecca Patton, James Valentine, D. Phillip Guillot, Louis Oubre, Stevens Moore, Jill Ondrejko, and J[illegible] Burchis, in solido, in the full sum of TWO MILLION DOLLARS AND NO/100 ($2,000,000.00), together with legal interest thereon from the date of judicial demand, until paid, and all costs of these proceedings, and further

Your complainant prays for a trial by jury, and further

Your complaint prays that, after all legal delays and due proceedings are had, there be a judgment herein in favor of the complainant, and against the defendants, in solido, in accordance with the above prayer, and further

Your complainant prays for all general and equitable relief to which he may be entitled in the premises.

/s/ Thomas A. Moore, M.D.

Thomas A. Moore, M.D.
Pro Se
502 Barrow Street
Houma, LA 70360
(504)876-2222

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Complaint for Damages with Request for Jury Trial* has been served upon Counsel of record as listed below, by depositing same in the U. S. Mail, postage prepaid, and properly addressed this 29th day of January, 1992.

Eneid A. Francis
Assistant United States Attorney
Hale Boggs Federal Building
501 Magazine Street
New Orleans, LA 70130

Jose Francisco De Leon
U. S. Department of Justice
P. O. Box 14198
Ben Franklin Station
Washington, DC 20004

/s/ Thomas A. Moore, M.D.

Thomas A. Moore, M.D.
Pro Se
502 Barrow Street
Houma, LA 70360

APPENDIX B

IN THE UNITED STATES
BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

IN RE:	)	
	)	
THOMAS A. MOORE, M.D.,	)	Case No.
	)	12071-TMB
	)	
Debtor	)	
	)	
THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. No. 91-1098-B
	)	
BRENDA FELGER, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM TO SUBSTANTIATE INJURY AND DAMAGES

MAY IT PLEASE THE COURT:

History of Injury:

On March 29, and continuing through March 30, the

defendants, Brenda B. Felger, et. al., entered the premises of Dorothy Lynn Moore to effect a tax levy pursuant to a *Writ of Entry* granted on March 22, 1990, by Magistrate A. Chasez. Agents Brenda B. Felger and Eugene E. Nepveaux forced entry to the residence by and with the accompanying armed criminal agents, D. Phillip Guillot and Louis Oubre. Upon entering the residence over the protests of Mrs. Moore, they showed Mrs. Moore the writ of entry. Mrs Moore summoned an attorney, Mr. Charley Schrader, who also protested the precipitous nature of the action. While Mr. Schrader was attempting to reach Magistrate Chasez to clarify the matter, Field Group Manager Henry McKinnell and the other agents arrived. On arrival, McKinnell ordered the other agents to proceed with the seizure. Agents spread through the residence in a Helter-Skelter fashion. When Mr. Schrader protested about agents going into files,[1] he was threatened with arrest. Mr. Schrader accordingly withdrew.[2]

The defendants proceeded to conduct an illegal search of private papers and records, some of which were records of Acadiana Psychiatric Services, A Medical Corporation; some were records of Acadiana Family Therapy Center, Inc., a corporation wholly owned by Mrs. Moore; some were purely personal records. Agents systematically searched through the Plaintiff's study, as well as his wife's separate study, opening all drawers and cabinets, and examined contents. They proceeded to remove those contents which appeared to be records, and made, or attempted to make, copies of various documents.[3] They then placed

---

Footnote 1 on page A-16.
Footnote 2 on page A-16.
Footnote 3 on page A-16.

many of the documents and records in boxes, which they were in the process of sealing when the Plaintiff returned at approximatedly 3:00 PM with Mr. Schrader who vehemently objected, as records were not specified in the writ of entry.[4] Though a computer, computer desk, copy machine, desk chair, and other items had already been removed at that time, defendants Stevens Moore,[5, 11] District Counsel for the Internal Revenue Service, and Jill Ondrejko,[5, 11] of the Civil Division of the United States Attorney's Office, came to the residence. They subsequently contacted Frederick Boyd, Special Agent of the Criminal Division who was in New Orleans, and he, on the basis of information and assumptions related to him by Moore and Ondrejko, made en affidavit[6] and obtained a search warrant[7] which was signed by Magistrate I. Lemelle in New Orleans at 5:35 PM on 3/29/90. Agents then proceeded to remove the previously-sealed boxes of various records[7] from the residence.

Plaintiff alleges the original entry to the premises was illegal.[8] Even if the writ of entry were legal, the exhaustive search of documents[4] on the premises, and their subsequent seizure was illegal; therefore, the information upon which Boyd relied in his affidavit for a search warrant on the same day could not be used to establish probable cause for the issuance of a search warrant after the fact. Without the information from Moore and Ondrejko, there

---

Footnote 4 on page A-16.
Footnote 5 on page A-17.
Footnote 6 on page A-17.
Footnote 7 on page A-17.
Footnote 8 on page A-17 - A-24.
Footnote 11 on page A-26.

was no cause, much less probable cause, to issue a search warrant. The search warrant was tainted by the affidavit[6] which contained facts learned as a result of the prior unconstitutional search.[4,9,10]

The Plaintiff has standing to assert his Fourth Amendment privilege.[10,11] The Plaintiff had a legitimate expectation of privacy in the property searched and seized. The Fifth Circuit in *U.S. v. Haydel*, 649 F.2d 140, 102 S.Ct.1721, stated that the factors to be considered in determining whether the defendant had a legitimate expectation of privacy were: 1) Whether the defendant had possessory interest in things seized or places searched; 2) Whether he had a right to exclude others from that place; 3) Whether he exhibited subjective expectation that it would remain free from governmental invasion; 4) Whether he took normal precautions to maintain privacy; and 5) Whether he was legitimately on the premises. *Id.* at 1155. Also see: *Rawlings v. Kentucky*, 448 U.S. 98 (1980).

The Plaintiff more than satisfies the above factors. The property seized by the IRS, the administrative records, i.e., patient files and billing information, were the property of the Corporations owned by the Plaintiff or his wife, or were personal records of the Plaintiff or his wife. He had a possessory interest in many of the things seized. They were kept in the course and scope of business. Furthermore, they were kept in the privacy of his wife's house

---

Footnote 6 on page A-17.
Footnote 4,on page A-16.
Footnote 9 on page A-25.
Footnote 10 on page A-25.
Footnote 11 on page A-26.

and the place where he resided. They were stored in his study in drawers and in his desks or on top of them. They were to remain private. However, the house in which the government searched is not owned by Dr. Moore. It is owned by his wife and he has had unconditional access and use of the premises since their marriage in 1980. He lived there at 207 Oak Alley Drive, Houma, Louisiana 70360. In *Haydal, supra,* the Court found that a son had a legitimate expectation of privacy as to records which he kept at his parents house underneath their bed. He owned the records that were seized and he had unencumbered access to the house.

In *U.S. v. Showalter,* 858 F.2d 149 (3rd Cir. 1988), the Court recognized a defendant's expectation of privacy for purposes of the Fourth Amendment in the premises they leased from the owner. *Id.* at 151.

Pursuant to the foregoing facts and law, the Plaintiff has standing to assert his Fourth Amendment privilege.

The IRS may execute a levy by seizing a taxpayer's property in order to satisfy his indebtedness. However, the IRS cannot intrude into an area of privacy without violating the Fourth Amendment unless it obtains a valid search warrant. *G.M. Leasing Corp. v. U.S.,* 429 U.S. 338, 358, 50 L.Ed.2d 530, 87 S.Ct. 619 (1977) on *remand* 560 F2d 1011 (CA 10 Utah), *cert. den.* 435 U.S. 923, 98 S.Ct. 1485, 55 L.Ed.2d 516. A search warrant must be based on probable cause.

The Supreme Court in *G.M Leasing* stated, 'One of the primary evils intended to be eliminated by the Fourth

Amendment was the massive intrusion on privacy undertaken in the collection of taxes pursuant to general warrants and writs of assistance." 429 U.S. at 355. In the case at hand, the IRS did not obtain a valid search warrant. They entered the premises of Dorothy Lynn Moore to effect a tax levy pursuant to a writ of entry granted on March 22, 1990, by Magistrate Chasez. The Plaintiff contends that this writ of entry was granted without probable cause to substantiate its issuance.[12]

Plaintiff alleges that the defendants knew, or should have known, that their actions exceeded the mandates granted to them in the pursuit of their duties.[13] Plaintiff alleges that the defendants knew, or should have known, that their actions deprived him of his rights under the Fourth Amendment to the Constitution of the United States. This is particularly true as two of the defendants are attorneys,[11,13] and makes the action of all the defendants more egregious as they are sworn by their respective offices to defend that very Constitution. Plaintiff alleges further that the defendants knew, or should have known, that they failed to follow all the procedural administrative steps[14] which their agency has set up in order to avoid such conflict with the Constitutional rights of each individual citizen.[10]

Plaintiff finally alleges that the actions of the defendants were calculated, willful, and malicious, and were in-

---

Footnote 10 on page A-25.
Footnote 11 on page A-26.
Footnote 12 on page A-26.
Footnote 13 on page A-26.
Footnote 14 on page A-27.

tended to injure him,[13] and anyone associated with him.[15] Their success in wreaking havoc in the personal and professional life of the Plaintiff is the basis for his claims of Injury and Damages.

Plaintiff respectfully asks the Court for the right to call witnesses as to facts to further substantiate the foregoing[11] and submits the attached Witness List.

DAMAGES:

Personal:

Plaintiff has sustained personal injuries of embarrassment, humiliation, emotional distress, and anguish.

The Plaintiff's wife has been unable to live in the residence at 207 Oak Alley Drive, Houma, Louisiana, since her hospitalization at Ochsner Hospital's Stress Unit on April 30, 1990. Since release from Ochsner with a diagnosis of "Post Traumatic Stress Disorder," the Plaintiff's wife has suffered from "psychic numbing" and has, as is common in the disorder, attenuated ability to express feelings of closeness and tenderness. Plaintiff has suffered the loss of love and affection and also endures the pain with which his wife continues to struggle through his empathy and natural protective feelings towards her. She continues to require professional treatment and chemotherapeutic agents and was hospitalized a second time in May of 1991

Footnote 11 on page A-26.
Footnote 13 on page A-26.
Footnote 15 on page A-28.

for the ongoing symptoms of this same disorder (See Exhibits #26, #27, and #28).

PROPRIETARY:

The unwarranted and unprecedented actions of the defendants in seizing from the residence certain tools of Acadiana Psychiatric Services, A Medical Corporation, necessary to conduct it's trade, i.e., patient records, office machines, etc., and the indiscriminate levying of all patients identified, far outweighed any collection purposes of the IRS.

Seizure of an automobile and operating funds and records from Acadiana Psychiatric Services, A Medical Corporation, made the Corporation unable to pay its contract employees, or hire full time employees, at a crucial period in its existence. Agent Felger was well aware of the Corporation and the reason for its inception.[16] Indeed, the Corporation was to be used to attain the very goals of accountability[16] and collection which the IRS purportedly sought. The successful operation of the Corporation represented the best opportunity for production and collection of revenues owed by it's stockholder, the Plaintiff. Seizing the assets and property of the Corporation on May 4[17] and May 7,[17] 1990, in a clandestine manner and without basis, has meant the loss of all contract workers, and the attendant public knowledge of the seizure, has crippled the ability of the Corporation to secure alternate professional personnel. As a result, potential earnings of

---

Footnote 16 on page A-28.
Footnote 17 on page A-28.

the Corporation, which would have been available to the Plaintiff, have been forfeited.

As the principle revenue producer still remaining in the Corporation, funds generated by the Plaintiff's medical services rendered through the Corporation now represent it's total revenues.

The Plaintiff's medical services for the past five plus years have been increasingly rendered through his ability to practice at Bayou Oaks Hospital. The awareness of the Administration at Bayou Oaks Hospital of the climate produced by the unorthodox and malicious conduct of the defendants towards the Plaintiff made it doubtful to the Administration as to whether the Plaintiff could continue to maintain the work load which he had previously shouldered.

As a result, Administration redoubled their efforts to recruit additional psychiatrists. Addition of other psychiatrists, to which the hospital then had special obligations, has greatly reduced the plaintiff's patient base.

Graphs of patient hospital days under Plaintiff's care are included as Exhibit #31 to show monthly and quarterly what impact the defendants' actions had on Plaintiff's productivity. With the prospect of renewed collection efforts following dismissal of the Plaintiff's Chapter 11 protection,[18] Plaintiff fears a repeat of the decreased productivity as in the months following the seizures.

Footnote 18 on page A-29.

WHEREFORE, the Plaintiff prays that after all legal delays and due proceedings are had there be a judgment herein in favor of the Plaintiff, Thomas A. Moore, Sr., M.D., and against the defendants Brenda Felger, et. al., in solido, in the full sum of TWO MILLION DOLLARS AND NO/100 ($2,000,000.00) together with legal interest thereon from the date of judicial demand, until paid, and all costs of these proceedings and further,

Plaintiff prays for trial by jury and, further,

Plaintiff prays for all general and equitable relief to which he may be entitled in the premises.

Thomas A. Moore, Sr., M.D.
Pro Se
502 Barrow Street
Houma, LA 70360
(504) 876-2222

---

[1] **Testimony of Brenda B. Felger, from Exhibit #1.**
Page 31, lines 6-9. "Q: Did each person have a particular duty? A: Not specifically, but to inventory."

Page 97, line 13 through Page 98, line 5. Q: On the day of the seizure, was there an assignment by you of the various agents to various portions of the house; you take this room, or you take that room? A: There may have been. Q: Would that have been a written assignment? A: No. Q: Do you recall whether in fact there was? Do you recall telling, let's say, Mr. Reedy; you go into that room over there; or, Mr. McKinnell, you go over there and do this? A: I'm sure I did that, yes. Q: But you don't recall specific directions given to anybody? A: No."

Testimony of Eugene E. Nepveaux, from Exhibit #2.
Page 228, lines 19-22. Q: Which room did you inventory; do you recall? A. I guess no specific one. I was in all of them I think."

[2] But one who demands admission under a claim of federal authority stands in a far different position. The mere invocation of federal power by a federal law enforcement official will normally render futile any attempt to resist an unlawful entry or arrest by resort to the local police; and a claim of authority to enter is likely to unlock the door as well. See Weeks v. United States, 232 U.S. 383, 386, 34 S.Ct. 341, 342, 58 L.Ed. 652 (1914); Amos v. United States, supra. "In such cases there is no safety for the citizen, except in the protection of the judicial tribunals, for rights which have been invaded by the officers of the government, professing to act in its name. There remains to him but the alternative of resistance, which may amount to crime." United States v. Lee, 106 U.S. 196, 219, 1 S. Ct. 240, 259, 27 L.Ed. 171 (1882). 91 S.Ct. 1999 (1971). 403 U.S. 394 at 2003-2004.

[3] **Testimony of Eugene E. Nepveaux, from Exhibit 2.**
Page 226, lines 4-19. Q: do you recall whether the Internal Revenue Service made copies of a document with the copy machine that was at the house the date of the seizure? A. The copy machine was laid out to the best of my recollection. We tried to get it working. I don't remember any copies being run off. We tried to get it to working and — I tried at one point. I forget exactly what I wanted to copy. I couldn't get it working. Q. You were looking at documents at that particular point? A. I suppose so. I don't remember what I was looking at."

[4] "2. Searches and Seizures: The Fourth Amendment confines an officer executing a search warrant strictly within the bounds set by the warrant. U.S.C.A.Const. Amend.4" 91 S. Ct., 1999 (1971), at 2000. 403 U.S. 388

Footnote 4 continued.

The IRS may execute a levy by seizing a taxpayer's property in order to satisfy his indebtedness. However, the IRS cannot intrude into an area of privacy without violating the Fourth Amendment unless it obtains a valid search warrant. *G.M. Leasing Corp. v. U.S.*, 429 U.S. 338, 358, 50 L.Ed.2d 530, 87 S.Ct. 619 (1977) on *remand* 560 F.2d 1011 (CA 10 Utah), *cert. den.* 435 U.S. 923, 98 S.Ct. 1485, 55 L.Ed.2d 516. A search warrant must be based on probable cause.

The Supreme Court in *G.M. Leasing* stated, "One of the primary evils intended to be eliminated by the Fourth Amendment was the massive intrusion on privacy undertaken in the collection of taxes pursuant to general warrants and writs of assistance." 429 U.S. at 355. In the case at hand, the IRS did not obtain a valid search warrant.

[5] **Testimony of Brenda B. Felger, from Exhibit #1.**
Page 31, line 24 through Page 32, line 22. "Q. Why was Mr. Stevens Moore there? A. Mr. Moore was available for the seizure, for any legal questions. Q. Is it normal for district counsel to be at a seizure of either a house or furniture? A. He came to the seizure later on for other reasons. Q. How about Miss Andreco? A. Same as Mr. Moore. Q. What time did Mr. Moore get there? A. I don't know. Q. Early afternoon, late afternoon? A. I don't know. Q. How about Miss Andreco? A. I don't know. Q. Had you requested that Mr. Moore or Miss Andreco be there? A. Be where? Q. At the seizure. A. No, I did not."

[6] **Exhibit #3.**

"There is a very simple connection line. Once it was established that charges had to be brought at any cost and despite everything, threats, violence, torture became inevitable."
From: *the Gulag Archipelago* by Solzhenitsyn. Page 98.

[7] **Exhibit #4: Search Warrant; Exhibit #5: Inventory List**

[8] In the affidavit (Declaration of Revenue Officer) attached to the motion to effect a tax levy, Brenda B. Felger states that the property at the home of Dorothy Lynn Moore is subject to seizure because she is the Plaintiff's wife and therefore his nominee. There is nothing in the affadavit to establish that his wife is in fact a nominee. The government, in its motion to execute and in the attached affidavit, just makes conclusory statements that Dorothy Lynn Moore is the nominee of the Plaintiff. There is no factual basis for this conclusion. In fact, there is

---

Footnote 8 continued.

proof that she is not a nominee. The Plaintiff and his wife were married in 1980 whereby they established a separate property regime according to Louisiana law. The house in which they both reside was purchased by Mrs. Moore's separate funds and remained separate property. The various household goods and furnishings were owned by Mrs. Moore, not Dr. Moore. The government did not present sufficient information on which the magistrate could order a writ of entry based on probable cause. The property which the government specified in its application for the writ was not the property of the taxpayer and thus was not subject to the execution of a levy absent proof that his wife was his nominee. There must be probable cause to determine that the property belonged to the taxpayer. The lack of probable cause renders the writ of entry illegal.

Subsequent to the seizure, sworn deposition testimony given by Agent Felger (Exhibit 1) and Agent Nepveaux (Exhibit 2) appearing as representatives of the United States of America in a related case (Civil Action #90-1918) pending in the United States District Court, Eastern District of Louisiana, given no additional factual basis in support of the conclusion reached in Felger's affidavit. These depositions are offered as exhibits for their total content; however, pertinent excerpts have been listed.

..."slanderous declarations are often given the green light" in the Cheka. From: *The Gulag Archipelago* by Solzhenitsyn. Page 97.

Testimony of Brenda B. Felger, from Exhibit #1.
Page 20, line 7 through Page 21, line 18. "Q. Were you involved in the determination that Mrs. Moore was a nominee of Dr. Moore in any way? A. No. Q. A minute ago, you said that the request was in progress. What do you mean? At what stage was it when you took over? A. The nominee request was already forwarded. Q. It was already forwarded to who? A. District Counsel. Q. And when did that nominee request come back. A. The nominee request doesn't come back. Q. When did a response from counsel come bock? A. February. Q. February? A. 1990. Q. February what; do you recall? A. I don't remember. I don't recall. Q. Was it before or after you had been assigned the case? A. Just after, I believe. Q. Did you check to see after you had gotten the request back that all the proper procedural steps had been taken to obtain the request? A. No, I did not."

Footnote 8 continued.

Testimony of Brenda B. Felger, March 7, 1990, from Exhibit #3.
Page 8, lines 10-16, "Q. When did you first get involved in the case that we are here today for, United States of America versus Dr. Moore? A. I became involved as of last Wednesday when the previous revenue officer, Gene Navo, gave me a call and advised me that he was instructed to hand over the case to the local office in Houma and I being the senior revenue officer was the one would be handling the case."

Page 23, line 4 through Page 25, line 24. "BY MR. MAYHALL: Q. Were there facts set forth in the request to establish in the request to district counsel for permission to treat Mrs. Moore as a nominee for? MR. DELEON: I don't understand the question. I'm sorry. BY MR. MAYHALL: Q. Were there facts set forth? MR. DELEON: I have an objection to that. Whatever was said to district counsel is a matter that's covered by the attorney-client privilege. MR. MAYHALL: I'm not asking what was said. I'm asking whether there were facts set forth in the request. MR. DELEON: Whatever is included in that request is subject to attorney-client privilege. BY MR. MAYHALL: Q. When you received the permission from district counsel to go forward with the nominee assessment, that was in February after you had been assigned the case? A. I believe so, yes. Q. What were the steps that you took at that point. A. I prepared for the seizure. Q. Prepared for the seizure? A. Yes. Q. Did you issue any notices to Mrs. Moore? A. No, I did not. Q. Did you call Mrs. Moore and request her to turn over the property to you? A. No, I did not. Q. did you call Mrs. Moore or contact Mrs. Moore in any manner? A. No. I did not. Q. Why didn't you contact Mrs. Moore? A. Because it wasn't necessary. Q. And why wasn't it necessary? A. Because Dr. Moore had already been given all the notices necessary by law. Q. And you didn't believe that Mrs. Moore was entitled to notice? A. No, I did not. Q. Did you believe at that point, it was the Government's position at that point that all the property that Mrs. Moore possessed was in fact property that she was holding as a nominee for Dr. Moore? A. All the information I had at that time, yes, did indicate that. Q. Is the Government still of that opinion; that all the property that Mrs. Moore possessed, that she possesses or owns as the nominee of Dr. Moore? A. At this time, yes."

Page 60, lines 7-25. "Q. Did you independently review the facts and determine in your mind whether a nominee situation existed? A. I answered that question already, Mike. I told you what I relied on. Q. You relied upon the determination that had previously been forwarded to you, that a nominee situation existed? A. That is correct. Q. When

Footnote 8 continued.

you took over the file, the request for the determination was in progress. And you received it after you received the file? The determination came in after you had been assigned the file? A. That is correct."

Page 64, line 15 through Page 65, line 19. "BY MR. MAYHALL: It's my belief that I have a right to know what facts you as the supervising managing agent of the seizure relied upon in making the seizure. And if you did in fact rely, as you testified to, which I have no reason to doubt, that you relied upon the facts set forth in the determination and the facts that Mr. Nepveaux testified to yestserday, as I understand, that is your testimony? A. Yes, it is. Q. I have a right to know that. And if there are any other independent facts, it's my belief, not today, not what may be presented in court, not what may be discovered by your counsel, not what may be asked of Mrs. Moore, but of any facts that you relied upon or you knew about at the time of the seizure, it's my belief that I have a right to know. That is the question I'm asking you. As I understand, you're saying that there are no facts that you relied upon other than what either Mr. Nepveaux testified to or what was contained in the determination; is that correct' A. That is correct."

Page 143, lines 3-25. "Q. Why did the Government take the position that Mrs. Moore was a nominee rather than a transferee? MR. DELEON: I have the same objection. MR. MAYHALL: I think I have a right to know why the Government took the position, a nominee position rather than a transferee position. I believe I have a right to know that. and your continual reliance upon internal workings of the government is just simply not valid. For you to say that we have no right to discover the basis and the determination as to why the government took certain actions I don't believe is correct. Are you instructing the witness not to answer that? MR. DELEON: Yes.

Testimony of Eugene E. Nepveaux, from Exhibit #2.
Page 31, line 23, through Page 33, line 18. "BY MR. MAYHALL: Q: Just the facts. I understand that there is a determination. I would like the Government to tell the facts. That is all that I am asking for. MR. DELEON: To the extent that the witness is going to testify to certain facts that were submitted to District Counsel that is an attorney/client privilege matter. MR. MAYHALL: That is fine. I have asked what facts the Government has relied upon to show that Dorothy Lynn Moore is the nominee of Thomas A. Moore, Sr.? The witness has said the particular transfers. I would like to know what facts surround those transfers that the Government has used to determine that Dorothy

Footnote 8 continued

Lynn Moore is the nominee of Thomas A. Moore? A: I assume there are facts surrounding a certain transfer of property and when were the transfers—which pieces of property first? A. Well, we can start with the real estate I suppose. Q. What real estate are you talking about? A. 207 Oak Alley. Q. Describe the facts surrounding how Dorothy Lynn Moore is the nominee of Thomas A. Moore as to 207 Oak Alley, please? A. Well, all I am saying here is that I felt like a lien against Dr. Moore was effective against the property. That is really what I am saying. Whether that translate to some kind of nominee theory, I don't know."

Page 63, line 16 through Page 66, line 25. "Q. When the Government sends somebody a Notice of Levy and the person who is the recipient of the levy either doesn't respond or claims that they hold no property of the tax payer, what is the Government's normal procedure at that point? A. If we prove that there is some property that they are holding then we try to attempt for suit for failure to honor the levy. Q. Would you explain what that is? A. It is a procedure when we can identify property as being of the tax payer and file suit in a District Court to recover that specific property. Q. In connection with the property at 207 Oak Alley was that done in this case? That was not done in this case, was it? A. No. Q. Can you tell me why? A. No, I don't know why. Q. So the normal procedure when you send somebody a levy is if they fail to respond to it or claim that it is not the tax payer's property is to file a suit to enforce the levy? A. Yes. I think that had a lot to do with the facts we had on hand at the time. Q. Tell me those facts. Why was the normal procedure—is it your testimony that the normal procedure was not followed in this case. Why was the normal procedure not followed in connection with the seizure of the assets of 207 Oak Alley? MR. DELEON: I have an objection to—you seem to be talking about two different types of levy. BY MR. MAYHALL: Q. A levy of property of the tax payer in the hands of the third party. The witness has testified that when the property is not turned over by the third party or when the third party objects and that it is not property of the tax payer, that the normal procedure is to file a suit in federal District Court. *I would like to know why that procedure was not followed in ths case?* MR. DELEON: That procedure is applicable, for example, the IRS can also levy on a bank and the bank fails to honor the levy. That has nothing to do with the situation in this case. BY MR. MAYHALL: Q. The Notice of Levy provisions does not single out banks. There are specific rules for banks. *The witness here has testified that the normal procedure is when a levy is not honored is to file a suit to enforce the levy. I would like to know why that*

Footnote 8 continued

procedure was not followed in this case? MR. DELEON: You are mischaracterizing the witness's testimony. That is not what he stated. BY MR. MAYHALL: Let me ask you this, Mr. Nepveaux. Is it the Government's normal procedure when a third party does not turn over property which the Government asserts belongs to the tax payer to file a suit in Federal District Court to enforce the levy? A. Well, you used the word "normal." I meant generally. Generally, if we can identify property, yes."

Page 72, lines 7-21. "Q. Was there a notice sent to Mrs. Moore prior to the seizure of her assets as alleged nominee of Thomas A. Moore? A. A Notice of Levy, yes. Not a Notice of Seizure of physicial assets. Q. Was there a Notice of Levy sent to Mrs. Moore as the nominee of Thomas A. Moore as the alleged nominee of Thomas A. Moore prior to the seizure of her assets on March 29, 1990? A. I didn't send one. Q. *Did the Internal Revenue Service send one? A. Not to my knowledge.*"

Page 121, lines 1-5. "Q. As I recall, you said you never interviewed Mrs. Moore and asked her what duties she performed on behalf of Dr. Moore. A. No."

Page 163, line 18 through Page 164, line 17. "Q. So if I can understand your answer here, you are saying that the cash in the bank account at Progressive Bank and Trust Company and First National Bank in the account of Dorothy Moore were seized because the IRS did not believe that she did not have enough income reported on her income tax return to accumulate those sums? A. In general that is correct. *I don't have anything specific along that particular asset line or that line of assets. Q. Does the Government have anything specific on those specific assets? A. Not that I am aware of.* Q. In any event, that was not involved in your determination that she was the nominee as to those accounts? No other facts were involved other than what you just testified to? A. Well, on the issue of money, there were some monies that she collected in the past. It was my decision that whatever she owned Dr. Moore owned an interest in, if not full title."

Exhibit 7: Letter dated August 17, 1987.
(It was Mr. Nepveaux's *decision* in 1987, without investigation, that Mrs. Moore's separate property belonged to Dr. Moore. He never allowed his lack of evidence to sway him. despite the plethora of evidence to the contrary.)

Footnote 8 continued

"What prompted them all to slip into harness and pursue so zealously not truth but totals of the processed and condemned? Because it was most comfortable for them not to be different from the others. And because these totals meant an easy life, supplementary pay, awards and decorations, promotions in rank, and the expansion and prosperity of the Organs themselves."
From: *The Gulag Archipelago* by Solzhenitsyn. Page 146-147.

"No one dares check up on what you do. But no one is exempt from your checking up on him. And therefore, in dealing with ordinary so-called citizens, who for you are mere blocks of wood, it is altogether appropriate for you to wear an ambiguous and deeply thoughful expression. For, of course, you are the one—and no one else—who knows about the special considerations. And therefore you are always right."
From: *The Gulag Archipelago* by Solzhenitsyn. Page 149.

Testimony of Eugene E. Nepveaux, from Exhibit #2.
Page 207, line 19 through Page 210, line 3. "Q. Did you ever inquire of Mrs. Moore or Dr. Moore when she acquired the emerald? A. Other than the summons when she failed to appear, no. Q. Would it make any difference in your determination as to assets that Mrs. Moore acquired prior to January 1, 1980, be they by gift from Dr. Moore or inheritance from her mother and father. Would the fact that the acquisition was made prior to January 1, 1980 make any difference in your determination or the Government's determination that those assets acquired by Mrs. Moore and seized by the Internal Revenue Service on March 29, 1990, acquired by her prior to January 1, 1980, that she is holding those assets as the nominee for Tom Moore? MR. DELEON: I have an objection to the question on the grounds that you have picked a date which I don't know what the significance is in terms of—I don't know what January of 1980 has to do with anything. To that extent I have an objection. MR. MAYHALL: He still can answer the question. THE WITNESS: Well, it may or it may not. That was one of the purposes and reasons why I issued the summons back in mid 1989 for her to tell me when she acquired these assets. If she acquired them by gift from Dr. Moore than I have already told you before that I was not in the position to recognize any donation from him to her in the face of our lien or in the face of a tax liability. If any of these assets had been acquired by her from him in the face of tax liability then that would mean one thing. If she had acquired them by legacy from someone else, her grandmother

Footnote 8 continued

or great grandfather or somebody then that would mean something else. BY MR. MAYHALL: *Q. But you never took the time to find out? You just assumed and determined that everything she had belonged to Dr. Moore? A. I don't know if assumption is the correct word. I suppose by the intent of your question I would have to say, yes.*"

Page 221, line 14 through Page 223, line 24. "Mr. MAYHALL: I believe the factual basis has been set out. The IRS seized assets that Mrs. Moore acquired prior to December 31, 1979. We were alleging that in our complaint. BY MR. MAYHALL: Q. I am asking, Mr. Nepveaux, if in his determination that Mrs. Moore was holding assets as the nominee for Thomas Moore, does that apply to those assets that Mrs. Moore acquired prior to December 31, 1979? A. *In this case?* Q. *In this case, yes, sir.* A. *Yes, sir.* Q. How does that apply to those assets? What right does the Government have to those assets that Mrs. Moore acquired prior to December 31, 1979? A. There is money flowing between them in 1982, for example. Debt repayment between themselves. Q. For the years that— A. Who knows who owns what in this case. Q. For the years that there is no Federal tax liability, for those years prior to December 31, 1979, what is the basis of the Government saying that the assets acquired by Mrs. Moore wither from her husband or any other third party that Mrs. Moore is holding those assets as the nominee of Dr. Moore? I will give you a further basis for it. There are no accruals of tax liability at that time; is there? Everything through 1979 has been paid in full; is that not correct? A. Was paid in full through 1985— Was paid in full in June 1985, May of 1985. Q. May 31st of 1985, I believe it was. *What is the basis for the Government to claim a lien on property that Mrs. Moore acquired prior to December 31, 1979 or the basis for the Government saying that Mrs. Moore is the nominee of Thomas A. Moore for property that she acquired prior to December 31, 1979? MR. DELEON: To the extent that you know. THE WITNESS: I guess I really don't know. BY MR. MAYHALL: Q. Does anybody in the Government know to you knowledge? A. I don't know the answer to that question either.*

---

[9] The IRS may execute a levy by seizing a taxpayer's property in order to satisfy his indebtedness. However, the IRS cannot intrude into an area of privacy without violating the Fourth Amendment unless it obtains a valid search warrant. *G.M. Leasing Corp. v. U.S.*, 429 U.S. 338, 358, 50 L.Ed.2d 530, 87 S.Ct. 619 (1977) on *remand* 560 F2d 1011 (CA 10 Utah), *cert. den.* 435 U.S. 923, 98 S.Ct. 1485, 55 L.Ed.2d 516. A search warrant must be based on probable cause.

The Supreme Court in *G.M. Leasing* stated, "One of the primary evils intended to be eliminated by the Fourth Amendment was the massive intrusion on privacy undertaken in the collection of taxes pursuant to general warrants and writs of assistance." 429 U.S. at 355. In the case at hand, the IRS did not obtain a valid search warrant.

In *U.S. v. Showalter,* 858 F.2d 149 (3rd Cir. 1988), the Court recognized a defendant's expectation of privacy for purposes of the Fourth Amendment in the premises they leased from the owner. *Id.* at 151.

This case, however, while civil in nature is not between private parties and there is no analogous independent deterrents to, or remedies against government violations of the fourth Amendment. The prohibition against unreasonable searches and seizures is directed at governmental action. Absent an exclusionary rule, the government would be free to undertake unreasonable searches and seizures in all civil cases without the possibility of unfavorable consequences." *Pizzarello* at 408 F.2d 586.

[10] The Fourth Amendment provides that: "The rights of people two be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." 91 S.Ct. 1999 (1971) at 2001. 403 U. S. 390.

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163, 2 L.Ed. 60 (1803). Having concluded that petitioner's complaint states a cause of action under the fourth Amendment, supra, at 2001-2004, we hold that petitioner is entitled to recover money damages for any injuries he has suffered as a result of the agents' violation of the Amendment. 19 S. Ct. 1991 (1971). 403 U.S. 398 at 2005.

"It guarantees to citizens of the United States the absolute right to be free from unreasonable searches and seizurs carried out by virtue of federal authority. 403 U.S. 390 at 2002.

---

[11] 102 S. Ct. 2727 (1982) Justice Brennan: "I agree with the substantive standard announced by the Court today, imposing liability when a public official defendant 'knew or should have known' of the constitutionally violative effect of his actions. Ante, at 2737, 2739. This standard would not allow the official who actually knows that he was violating the law to escape liability for his actions,..." "...Thus the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies 'across the board' to all 'government officials performing discretionary functions.' I write separately only to note that given this standard, *it seems inescapable to me that some measure of discovery may sometimes be required to determine exactly what a public-official defendant did 'know' at the time of his actions.*" 102 S. Ct. at 2739-2740.

[12] **Testimony by Eugene E. Nepveaux, from Exhibit #2.**
Page 223, line 7 to 24.
"What is the basis for the Government to claim a lien on property that Mrs. Moore acquired prior to December 31, 1979 or the basis for the Government saying that Mrs. Moore is the nominee of Thomas A. Moore for property that she acquired prior to December 31, 1979? MR. Delon; To the extent that you know. THE WITNESS: I guess I really don't know. BY MR. MAYHALL: Q. Does anybody in the Government know to you knowledge? A. I don't know the answer to that question either.

[13] "Referring both to the objective and subjective elements, we have held that qualified immunity would be defeated if an official '*knew or reasonably should have known* that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with *malicious intention* to cause a deprivation of constitutional rights or other injury...' " Ibid. (emphasis added). 102 S. Ct. 2727 (1982) at 2736-2737.

The Wood court divided the qualified immunity defense into objective and subjective elements. The objective elements involves an official's knowledge of and respect for basic constitutional rights. The subjective component refers to 'permissible intentions.' Under this test, the defense of qualified immunity was defeated if an official 'knew or reasonably should have known that the action he took within the sphere of official responsibility would violate the constitutional right of the [plaintiff], or if he took the action with malicious intention to cause a deprivation of constitutional rights or other injury...' " Id. 420 U.S. at 322, 95 S.Ct. at 1000-1001. 751 F.2d 1472 (1985).

---

[14] **Testimony of Eugene E. Nepveaux, from Exhibit #2.**
Page 63, line 16 through Page 66, line 25. **"Q. When the Government sends somebody a Notice of Levy and the person who is the recipient of the levy either doesn't respond or claims that they hold no property of the tax payer, what is the Government's normal procedure at that point? A. If we prove that there is some property that they are holding then we try to attempt for suit for failure to honor the levy. Q. Would you explain what that is? A. It is a procedure where we can identify property as being property of the tax payer and file suit in a District Court to recover that specific property. Q. In connection with the property at 207 Oak Alley was that done in this case? That was not done in this case, was it? A. No. Q. Can you tell me why? A. No, I don't know why. Q. So the normal procedure when you send somebody a levy is if they fail to respond to it or claim that it is not the tax payer's property is to file a suit to enforce the levy? A. Yes. I think that had a lot to do with the facts we had on hand at the time. Q. Tell me those facts. Why was the normal procedure— is it your testimony that the normal procedure was not followed in this case. Why was the normal procedure not followed in connection with the seizure of the assets of 207 Oak Alley? MR. DELEON: I have an objection to— you seem to be talking about two different types of levy. BY MR. MAYHALL: Q. A levy of property of the tax payer in the hands of the third party. The witness has testified that when the property is not turned over by the third party or when the third party objects and that it is not property of the tax payer, that the normal procedure is to file a suit in Federal District Court.** ***I would like to know why that procedure was not followed in this case?*** **MR. DELEON: That procedure is applicable, for example, the IRS can also levy on a bank and the bank fails to honor the levy. That has nothing to do with the situation in this case. BY MR. MAYHALL: Q. The Notice of Levy provisions does not single out banks. There are specific rules for banks.** ***The witness here has testified that the normal procedure is when a levy is not honored is to file a suit to enforce the levy. I would like to know why that procedure was not followed in this case?*** **MR. DELEON: You are mischaracterizing the witness's testimony. That is not what he stated. BY MR. MAYHALL: Let me ask you this, Mr. Nepveaux. Is it the Government's normal procedure when a third party does not turn over property which the Government asserts belongs to the tax payer to file a suit in Federal District Court to enforce the levy? A. Well, you used the word "normal." I meant generally. Generally, if we can identify property, yes."**

See all excerpts from Exhitit #1, Testimony by Brenda B. Felger, listed on pages 9, 10, and 11 of footnotes.

---

[15]Methods used by the Organs:

5. Preliminary humiliation - a single purpose: to dishearten and humiliate.
9. Playing on one's affection for those one loved.

From: *The Gulag Archipelago* by Solzhenitsyn. Pages 104-105, 106.

[16]**Testimony from Exhibit #3.**
Page 45, Lines 11-13. "THE WITNESS (Dr. Moore): It is because we have formulated the situation I am incorporating, I am going to keep meticulous records and they can come dunn my salary."

In the meeting with Agent Felger and Agent Steve Fanguy of March 19, 1990, Plaintiff's attorney, Mr. Schrader, gave Felger full details of the formation of Acadiana Psychiatric Services, A Medical Corporation, and invited her agency to participate in formulating the type records which would satisfy their needs.

Felger had several meetings with Mr. Mayhall, Mr. Schrader, and Claude Bergeron, CPA, during the month of April, 1990, in reference to what would be required by the Corporation to satisfy all concerned.

Felger has, in the interim, examined the accounting techniques enlisted by the Corporation and found them to be comprehensive and verifiable.

[17]**Windsor Court Documents**
Exhibit #8: Felger's Declaration faxed to Holiday Inn 23:09 5/4/90.
Ignores Corporation as separate judicial entity.

Exhibit #9: Ordrejko's Exparte Motion faxed to Holiday Inn 23:10 5/4/90.
Makes six conclusions of fact on which there is no basis.

Exhibit #10: Order of Entry - Magistrate Chasez faxed to Holiday Inn 23:12 5/4/90.

Exhibit #11: Notice of Levy
To Windsor Court Hotel 5/5/90.

Exhibit #12: Notice of Seizure to: Thomas A. Moore, M.D., changed to Windsor Court Hotel 5/4/90.
Ignores fact that property was that of Acadiana Psychiatric Services, A Medical Corporation. Agents McKinnell, Nuss, et.al., and Ondrejko

seized the property of the Corporation about midnight after which they came to the room the Plaintiff was occupying to announce their deed. This timing can only have been to humiliate Plaintiff who had come to New Orleans the evening of 5/4/90 to attend his daughter's graduation from L.S.U. Medical School the next day.

On May 7, 1991, agents seized funds of the Corporation in Progressive Bank & Trust in Houma, Louisiana.

[18] Acadiana Psychiatric Services, A Medical Corporation, has a Wrongful Levy Suit pending in U. S. Bankruptcy Court for the Eastern Division of Louisiana, as it was forced to seek protection of Chapter 11, Case #90-12072-TMB, by the malicious acts of these agents in the excessive exercise of their discretionary powers.

Plaintiff's plan for reorganization was rejected on September 10, 1991. The persons rejecting this plan were either defendants in this damage suit or their attorneys. Plaintiff has cause to question the objectivity of these persons as pressure was brought by J. F. DeLeon, in a meeting with Plaintiff and his attorney, Mr. Ron Hof, on September 5, 1991, for Plaintiff to dismiss his damage complaint.

Mr. DeLeon argued that Plaintiff's suit would not receive favorable action as, "The Judge works for the Government."

EXHIBIT LIST

Exhibit #1: Deposition of the United States of America by its representative, Brenda B. Felger, regarding Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana, taken on Wednesday, October 17, 1990.

Exhibit #2: Deposition of The United States of America by its representative, Eugene E. Nepveaux, regarding Civil Action No. 90-1989, United States District Court, Eastern District of Louisiana, Taken on Tuesday, October 16, 1990.

Exhibit #3: Transcript of Hearing Before The Honorable Robert F. Collins. Volume II. Docket No. 89-2451, United States District Court, Eastern District of Louisiana, March 7, 1990.

Exhibit #4: Affidavit of Criminal Agent Frederick Boyd, March 19, 1990.

Exhibit #5: Search Warrant, March 29, 1990.

Exhibit #6: Inventory List of Records.

Exhibit #7: Letter from Barry Melancon dated August 17, 1987.

Exhibit #8: Declaration of Revenue Officer Brenda B. Felger, Faxed to Holiday Inn 23:09 on 5/4/90.

Exhibit #9: Exparte Motion of the United States of America to Enter Premises to Effect a Tax Levy, by Jill Ondrejko, Faxed to Holiday Inn 23:10 on 5/4/90.

Exhibit #10: Order for Entry on Premises tso Effect Tax Levy, by Magistrate Chasez, 5/4/90.

Exhibit #11: Notice of Levy

Exhibit #12: Notice of Seizure

Exhibit #13: Deposition of Dorothy Lynn Moore, taken on Wednesday, October 17, 1990. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #14: Deposition of Dorothy Lynn Moore, taken on Tuesday, March 26, 1991. Civil Action No. 90-1918. United States District Court, Eastern District of Louisiana.

Exhibit #15: Deposition of Thomas Aquinas Moore, Sr., M.D., taken on Wednesday, January 23, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #16: Deposition of Thomas Aquinas Moore, Sr., M.D., taken on Thursday, January 24, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #17: Deposition of Margaret M. Heaslip, taken on Tuesday, April 19, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #18: Deposition of Cyrus J. Fanguy, taken on Wednesday, April 10, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #19: Deposition of John A. Byrd, taken on Wednesday, April 10, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #20: Deposition of Robert Cournoyer, taken on Tuesday, April 9, 1991. Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana.

Exhibit #21: Deposition of Thomas Aquinas Moore, Sr., M.D., taken on Tuesday, February 5, 1991. Case #90-12071-B. Chapter 11. United States Bankruptcy Court, Eastern District of Louisiana.

Exhibit #22: Deposition of Thomas Aquinas Moore, Sr., M.D., taken on Wednesday, February 6, 1991. Case #90-12071-B. Chapter 11. United States Bankruptcy Court, Eastern District of Louisiana.

Exhibit #23: Deposition of Charley J. Schrader, Jr., taken on Tuesday, February 5, 1991. Case #90-12072-TMB. Chapter 11. United States Bankruptcy Court, Eastern District of Louisiana.

Exhibit #24: Deposition of Brenda B. Felger, regarding Civil Action No. 90-1918, United States District Court, Eastern District of Louisiana, taken on Tuesday, May 29, 1990.

Exhibit #25: Transcript of Hearing Before The Honorable Robert F. Collins. Civil Action No. 89-2451, United States District Court, Eastern District of Louisiana, May 16 and May 30, 1990.

Response to Rule to Show Cause. Civil Action No. 89-2451.

The Government's Brief in Support of Its Motion to Hold The Respondents in Contempt. (Includes Brenda B. Felger's Affidavit of May 23, 1990). Civil Action No. 89-2451.

Exhibit #26: Medical Report - Harold T. Conrad, M.D., F.A.P.A. Dated October 3, 1991.

Exhibit #27: Psychiatric Evaluation by Richard F. Mestayer, III, M.D.

Exhibit #28: Medical Report by Dian Denney, M.D., dated September 27, 1991.

Exhibit #29: Bergeron & Company Report for Thomas Aquinas Moore, M.D.; Bankruptcy Case No. 90-12071. Summarized Cash Flow Projections August 1, 1991 through December 31, 1996 (with accountants' compilation report thereon).

Exhibit #30: Bergeron & Company Report for Acadiana Psychiatric Services, A Medical Corporation; Bankruptcy Case No. 90-12072. Summarized Cash Flow Projections August 1, 1991 through December 31, 1996 (with accountants' compilation report thereon).

Exhibit #31: Graphs showing Patient Hospital Days and supporting documentation.

Witness List

Thomas A. Moore, Sr., M.D. Testimony will include, but not be limited to:

- facts on property of Lynn H. Moore, how she acquired her property, and offer supporting evidence.
- his knowledge and recall of conduct of defendants at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990.
- his knowledge of conduct of defendants Felger, Ondrejko, and McKinnell at seizure at Windsor Court on May 4 and 5, 1990.

Margaret M. Heaslip. Testimony will include, but not be limited to:

- her knowledge of Mrs. Moore's property.

Eugene Nepveaux. Testimony will include, but not be limited to:

- basis of his conclusions as to nominee determination;
- his collection actions regarding the Plaintiff from 1987 to present;
- his presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990.
- his meeetings with Charley Schrader and Barry Melancon in 1987

Brenda B. Felger. Testimony will include, but not be limited to:

- basis for her conclusions of Mrs. Moore as nominee;
- deviations from normal procedure for seizure;
- her presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990;
- her role in assessing the reorganizational plan of the Plaintiff;
- basis for seizure of property from Acadiana Psychiatric Services, A Medical Corporation, and factual basis for her Declaration of May 4, 1990;
- her knowledge of contents of 207 Oak Alley Drive prior to seizure;
- her testimony of her presence, duties, and activities on May 17, 1985, and May 31, 1985:
- her knowledge of the formation of Acadiana Psychiatric Services, A Medical Corporation;
- her examination and understanding of records seized from 207 Oak Alley Drive, Houma, Louisiana, on March 29, 1990.

Criminal Agents Louis Oubre and Phillip Guillot. Testimony will include, but not be limited to:

- their presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1991.

Jill Ondrejko, Civil Division of the United States Attorney's Office.
Testimony will include, but not be limited to:

- facts relating to her presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Loui-

siana, on March 29 and 30, 1990;
- facts relating to statements in her Exparte Motion of May 4, 1990;
- facts relating to her presence, duties, and activities in the seizure of property of Acadiana Psychiatric Services, A Medical Corporation, on May 4 and 5, 1990;
- facts concerning switch from Magistrate Wynne to Magistrate Chasez in July of 1989.

Stevens Moore, District Counsel for the Internal Revenue Service. Testimony will include, but not be limited to:
- facts relating to his presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990;
- facts relating to his participation in meetings with Mr. Hof regarding Plaintiff's Chapter 11 reorganization;
- his role in determining that Mrs. Moore is Plaintiff's nominee and factual basis for same.

Field Manager Henry McKinnell. Testimony will include, but not be limited to:
- his presence, duties, and activities at the seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990;
- his presence, duties, and activities in the seizure of property of Acadiana Psychiatric Services, A Medical Corporation, on May 4 and 5, 1990;
- factual basis for his approval of actions taken by IRS agents against Mrs. Moore as nominee.

Enid Francis, Civil Division of the United States Attorney's Office.
Testimony will include, but not be limited to:

- her activities and role in relation to the Plaintiff's Chapter 11 reorganization;
- her defense representation of Ms. Ondrejko in this action;
- possible conflicts of interest.

J. F. DeLeon, Attorney, U.S. Department of Justice, Trial Attorney, Tax Division. Testimony will include, but not be limited to:

- his activities and role in relation to the Plaintiff's Chapter 11 reorganization;
- his request to represent various defendants in this case;
- possible conflicts of interest.

Owens Dahl, Medical Office Consultant, President
Claude Bergeron, CPA
Mary Chauvin, Secretary to Harold Conrad, M.D.
Celeste Chabert, Utilization Review Coordinator, Bayou Oaks Hospital
Mary Chilek, Office Manager, Haydel Medical & Surgical Clinic
Brenda Shoultz, Business Office Manager, Bayou Oaks Hospital
Charley J. Schrader, Jr., Attorney
Debra Serpas, Medical Secretary
Beth Duet, MSW, BCSW, contract worker for Acadiana Family Therapy Center, later for Acadiana Psychiatric Services, A Medical Corporation
Janet Buescher, MSW, BCSW, contract worker for Acadiana Family Center, later for Acadiana Psychiatric Services, A Medical Corporation

Doug French, MSW, contract worker for Acadiana Family Therapy Center, later for Acadiana Psychiatric Services, A Medical Corporation

Wallace E. Smith, MSW, Ph.D., Former Administrator, Bayou Oaks Hospital

All above testimony will include, but not be limited to:

- their contacts with Mrs. Moore to verify her function as office manager for the Plaintiff and later to Acadiana Psychiatric Services, A Medical Corporation

Wallace E. Smith, MSW, Ph.D., Former Administrator, Bayou Oaks Hospital

Harold Conrad, M.D., F.A.P.A, Medical Director, Bayou Oaks Hospital

Don F. Carlos, M.D., President, Medical Staff, Bayou Oaks Hospital

Charles Montiero, Comptroller, Bayou Oaks Hospital

All above testimony will include, but not be limited to:

- the impact of agents' unorthodox actions on Plaintiff's hospital-associated productivity.

Mr. Charley J. Schrader, Jr., Attorney. Testimony will include, but not be limited to:

- meetings with Mr. Nepveaux in relation to Mrs. Moore in 1987;
- subsequent meetings with Mr. Nepveaux;
- his presence and observation of activities during seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29, 1990;
- his knowledge of organization of Acadiana Psychiatric Services, A Medical Corporation, and its purpose;
- his contacts and dealings with Brenda Felger in association with collection actions against Plaintiff.

Mr. Barry Melancon, CPA. Testimony will include, but not be limited to:

- meetings, contacts, and correspondence with Mr. Nepveaux in 1987.

Mr. Claude Bergeron, CPA. Testimony will include, but not be limited to:

- knowledge of Acadiana Family Therapy Center, Inc.; knowledge of Acadiana Psychiatric Services, A Medical Corporation.

Rt. Rev. Monsignor Edmund Moore. Testimony will include, but not be limited to:

- his knowledge of loans to Plaintiff and their purpose;
- his knowledge of ownership of residence and contents at 207 Oak Alley Drive, Houma, Louisiana;
- his knowledge of loan to Acadiana Psychiatric Services, A Medical Corporation.

Mrs. Pat Jordan, neighbor, 209 Oak Alley Drive on March 29 and 30, 1991. Testimony will include, but not be limited to:

- her observance of conduct of agents during seizure at 207 Oak Alley Drive, Houma, Louisiana, on March 29 and 30, 1990.

Mr. Ron Hof, Bankruptcy Attorney. Testimony will include, but not be limited to:

- facts of meetings with Internal Revenue Service and Justice Department personnel in behalf of Plaintiff for reorganization plan.

Mark Stein, Tax Attorney. Testimony will include, but not be limited to:

- facts relating to Dorothy Lynn Moore's employment (1985)
- facts relating to information given to the Government for preparation of Plaintiff's tax returns, 1980 through 1984.

David Bernstein, Tax Attorney. Testimony will include, but not be limited to:

- facts relating to information given to the Government for preparation of Plaintiff's tax returns, 1980 through 1984.

Cyrus Fanguy, Internal Revenue Service Agent. Testimony will include, but not be limited to:

- facts relating to summons issued regarding Plaintiff (1985)
- facts relating to summons issued regarding Dorothy Lynn Moore (1985)
- facts relating to summons issued regarding Plaintiff's children:
  Thomas A. Moore, Jr., Erin E. Moore, and Kelly K. Moore.
- facts relating to meetings with Dorothy Lynn Moore and Paul Cordes, Tax Attorney (1985)

APPENDIX C

MINUTE ENTRY
HEEBE, J.
JUNE 2, 1992

FILED
JUN 2 '92

THOMAS MOORE, M.D. — CIVIL ACTION

VERSUS — NO. 92-0367

BRENDA FELGER, ET AL. — SECTION "B"

This matter came on for hearing on a previous day on the motion of defendants, Brenda Felger, et al., to dismiss pursuant to Federal Rule of Civil Procedure 12(b) or in the alternative, for summary judgment pursuant to Federal Rule of Civil Procedure 56(b), and for sanctions pursuant to Federal Rule of Civil Procedure 11. The court, having heard the arguments of counsel, and having studied the legal memoranda submitted by the parties and the law, is now fully apprised in the premises and ready to rule.

Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim be, and the same is DENIED.

Date of Entry Jun - 3 1992

IT IS FURTHER THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(5) for insufficiency of service of process, and 12(b)(2) for lack of personal jurisdiction, be, and the same is hereby, DENIED WITHOUT PREJUDICE to defendants to file a motion under Federal Rule of Civil Procedure 4(j).

IT IS FURTHER THE ORDER OF THE COURT that the alternative motion of defendants, Brenda Felger, et al., for summary judgment pursuant to Federal Rule of Civil Procedure 56(b) be, and the same is hereby, GRANTED only as to the issue of whether defendants legally entered plaintiff's premises.

IT IS FURTHER THE ORDER OF THE COURT that the alternative motion of defendants, Brenda Felger, et al., for summary judgment pursuant to Federaal Rule of Civil Procedure 56(b) be, and the same is hereby, DENIED WITHOUT PREJUDICE as to the issues of qualified immunity and prescription.

IT IS FURTHER THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., for sanctions pursuant to Federal Rule of Civil Procedure 11 be, and the same is hereby, DENIED.

REASONS

This is a suit for damagaes filed on January 29, 1992 by a delinquent tax payer against certain IRS agents and other federal defendants. Plaintiff, Thomas A. Moore, M.D. ("Moore"), is indebted to the United States in excess of

$1 million for federal income tax liabilities for the years 1980-94 and 1986-89. In an attempt to collect these tax liabilities, the United States filed an *ex parte* motion seeking authorization for IRS agents to enter Moore's home and effect a tax levy. The *ex parte* motion listed various tangible property items such as furniture, jewelry and a stereo which the IRS maintained were subject to the tax levy. On March 22, 1990, Magistrate Chasez signed an order for Entry on Premises to Effect Tax Levy which authorized any revenue officer or other authorized employee of the IRS to enter Moore's home "to make such search as is necessary in order to inventory, levy, and seize property and rights to property belonging to said tax debtor to which the federal tax lien applies."

IRS agents entered the home on March 29, 1990. According to plaintiff, the agents not only seized his furniture, stereo etc., but searched through his private files and records and began to place many of these documents in boxes. Plaintiff's attorney, Charley Schraeder, objected to this, arguing that Moore's records were not specified in the order for entry. As a result, plaintiff claims that IRS lawyer, Stevens Moore, and U.S. Attorney, Jill Ondreko, came to the residence and contacted Stephen Boyd, an IRS special agent for the criminal division. Boyd obtained a search warrant from Magistrate Lemelle which authorized Boyd to search and seize accounts receivable from Moore's medical practice, and/or patient billing information.

Plaintiff alleges in the complaint that: 1) defendant, Brenda Felger, and others, illegally and unlawfully entered his home and conducted a lengthy, exhaustive and destruc-

tive search of his things, including his private books and papers, many of which they seized and carried away in contravention of the constitution, and the laws of the United States and Louisiana, and 2) in the event that the Court determines that the defendants' entry into Moore's home was lawful, Moore argues that the agents exceeded their scope of authority because their search and subsequent seizure of his files and records was not authorized by the order for entry signed by Magistrate Chasez, and thus, the information upon which Boyd relied to obtain his search warrant could not be used to establish probable cause.

Defendants moved to dismiss plaintiff's complaint or in the alternative, for summary judgment, arguing that it is undisputed that the defendants' entry into the Moore residence was legal, and that the action is barrd by the defendants' qualified immunity. Defendants argue further that Moore's action has prescribed, and that Moore has not effected service of process on defendants, Michelle Babin, Robert Singleton, Rebecca Patton and James Valentine.

1. *Legality of Defendants' Entry into Moore's Home*

Section 6331 of the Internal Revenue Code authorizes the IRS, within 10 days after notice and demand, to collect taxes by levy upon all property and rights to property belonging to a person who neglects to pay any tax. 26 U.S.C. § 6331. In order to satisfy the Fourth Amendment, entry into a private home by IRS agents to conduct a search and seizure pursuant to Section 6331 must be authorized by a valid court order. G.M. Leasing Corp. v. U.S., 429 U.S. 338, 358 (1977); In re Campbell, 761

F.2d 1181, 1186 (6th Cir. 1985).

The procedure for obtaining an order authorizing entry is summary in nature. *Campbell*, 761 F.2d at 1186. Judges are to determine whether the application and supporting affidavit show probable cause to enter, search for, and levy against personal property in aid of summary collection of assessed and unpaid taxes. U.S. v. Shriver, 645 F.2d 221, 222 (4th Cir. 1981).

Here, the defendant IRS agents entered Moore's home on March 29, 1990 pursuant to an Order for Entry on Premises to Effect Tax Levy signed by Magistrate Chasez which stated that there was probable cause to believe that property and rights to property subject to a tax levy were located on the premises. This order was issued pursuant to an *ex parte* motion filed by the United States. Attached to this motion was the declaration of defendant revenue officer, Brenda Felger, setting forth that: 1) the tax liabilities of Moore had been assessed; 2) notice of the assessment and demand for payment had been given to Moore; 3) Moore had failed to pay the tax liabilities; 4) assets subject to seizure were believed to be located on the premises, and 5) Moore refused to give consent to enter the premises in order to effect the tax levy. The tax levy was also attached to the motion.

Pursuant to the above undisputed facts, the court concludes that as a matter of law, the government's *ex parte* motion established probable cause that property subject to the tax levy was located at Moore's residence, and thus, the entry into Moore's home by defendants pursuant to the Order for Entry on Premises to Effect Tax

Levy was in compliance with the Fourth Amendment. *Campbell*, 761 F.2d at 1186-87; *Shriver*, 645 F.2d at 222. Therefore, the Court will grant defendants' alternative motion for summary judgment as to the issue whether defendants' entry into plaintiff's residence was legal.

II. *Qualified Immunity of the Federal Defendants*

The Court concludes, however, that defendants have not established at this time that they are entitled to dismissal or summary judgment on the basis of qualified immunity. Qualified immunity shields conduct not violative of clearly established constitutional or statutory rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Austin v. Borel, 830 F.2d 1356, 1358 (5th Cir. 1987). Here, plaintiff argues that despite his protests, the agents conducted a search through his records and files which was not authorized by, and beyond the scope of, the order for entry. Further, plaintiff argues that the subsequent search warrant which authorized the search and seizure of his records was not valid because the information Agent Boyd relied on to obtain the warrant was obtained illegally. Plaintiff maintains that the defendants, several of whom are lawyers, should have known that their search and seizure violated his rights under the Fourth Amendment.

The Court determines that these allegations are sufficiently fact specific to defeat, at this stage in the proceedings, a motion to dismiss or for summary judgment on the grounds of qualified immunity. Geter v. Fortenberry, 849 F.2d 1550. 1553 (5th Cir. 1988). Therefore, the Court will deny defendants' motion to dismiss for failure to

state a claim, and will deny without prejudice, defendants alternative motion for summary judgment on the issue of qualified immmunity.

III. *Prescription*

In determining whether this action is timely, the Court looks to state law. Gaspard v. U.S., 713 F.2d 1097, 1102 n. 11 (5th Cir. 1983). Here, the prescriptive period is one year from the date of injury and damage, as provided in Article 3492 of the Louisiana Civil Code. Defendants entered Moore's residence on March 29, 1990, and this suit was not filed until January 29, 1992. Therefore, defendants argue that plaintiff's action has prescribed.

However, Moore, who had petitioned for bankruptcy, timely filed a complaint similar to the one in this case, in bankruptcy court as an adversary proceeding. Moore subsequently voluntarily dismissed his petition in bankruptcy which resulted in the concomitant dismissal of his related adversary proceeding.[1] Under Louisiana law, an interruption of prescription results from the fling of suit in a competent court. However, interruption is considered never to have occurred if plaintiff abandons or voluntarily dismisses his suit. La. C.C. Art. 3463. Here, defendants have not addressed the issue of whether plaintiff's adversary proceeding interrupted prescription, or whether plaintiff is held to have voluntarily dismissed his adversary proceeding when he voluntarily dismissed his related bankruptcy case. Therefore, the Court will deny without

---

[1] The bankruptcy court denied Moore's motion to retain jurisdiction over the adversary proceeding. Moore has appealed this ruling.

prejudice, defendants' alternative motion for summary judgement on the issue of prescription.

IV. *Service of Process*

Defendants argue that Michelle Babin, Robert Singleton, Rebecca Patton and James Valentine have not been served, and therefore, plaintiff's claims against them should be dismissed for insufficiency of service of process under Federal Rule of Civil Procedure 12(b)(5) and for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). Plaintiff maintains that all defendants were served by mail, and that he has received a return of summons from 18 of the defendants, including Michelle Babin. Plaintiff claims he will attempt another form of service on Singleton, Patton and Valentine. The Court concludes that dismissal under rules 12(b)(5) and 12(b)(2) is not appropriate at this time and will deny defendants' motion to dismiss on this issue without prejudice to file a motion under rule 4(j) for failure to effect service within 120 days after the filing of the complaint.

Finally, the Court does not find that sanctions against plaintiff under Federal Rule of Civil Procedure 11 are warranted, and will deny defendants' motion on this issue.

Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim be, and the same is hereby, DENIED.

IT IS FURTHER THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(5) for insufficiency of service of process, and 12(b)(2) for lack of personal jurisdiction, be, and the same is hereby, DENIED WITHOUT PREJUDICE to defendants to file a motion under Federal Rule of Civil Procedure 4(j).

IT IS FURTHER THE ORDER OF THE COURT that the alternative motion of defendants, Brenda Felger, et al., for summary judgment pursuant to Federal Rule of Civil procedure 56(b) be, and the same is hereby, GRANTED only as to the issue of whether defendants legally entered plaintiff's premises.

IT IS FURTHER THE ORDER OF THE COURT that the alternative motion of defendants, Brenda Felger, et al., for summary judgment pursuant to Federal Rule of Civil Procedure 56(b) be, and the same is hereby, DENIED WITHOUT PREJUDICE as to the issues of qualified immunity and prescription.

IT IS FURTHER THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, et al., for sanctions pursuant to Federal Rule of Civil Procedure 11 be, and the same is hereby, DENIED.

/s/ Frederick J Heebe

UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

RECEIVED
JUN 15 '92

IN RE: THOMAS A. MOORE, M.D., Plaintiff vs. BRENDA FELGER, ET AL., Defendants	Civil No. 92-0367 Sec. "B" Mag

MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS' ENTRY INTO PLAINTIFF'S HOME

Now into Court comes Thomas A. Moore, M. D., Plaintiff, in proper person, to respectfully ask the Court to reconsider the legality of the entrance into his home by the Defendants on March 29, 1990 as ruled upon in the Minute Entry of this Honorable Court on June 2, 1992.

Plaintiff bases this request on the following:

Plaintiff alleges that the Writ of Entry granted by Magistrate Chasez was issued on the basis of Exparte

Motions which relied on several Affidavits (Declaration of Revenue Officer) which contained numerous statements which had no basis in fact.

In the several Affidavits Agent Felger named items which she claimed were the-"property of the said tax debtor, through his nominee, Dorothy Lynn Moore, (hereafter Mrs. Moore), to which the federal tax lien applies, and to which levy may be made—"

items listed were:

- "a 1980 Rolls Royce"

- "a 1982 GMC VAN"

- "a 1989 Toyota Supra"[1]

- "various household goods and furnishings, including but not limited to, a computer system, a sofa, various living and dining room furniture, a china hutch, and bedroom furniture."

- "various jewelry items including but not limited to a large opal, small opal, ruby, and an emerald."

Nothing in these Affidavits established in any way that Mrs. Moore was in fact, the nominee of the Plaintiff as to any of the items listed. The government in its motion to execute, just made conclusory statements that Mrs. Moore was the nominee of the Plaintiff. Agent Felger asserts as

---

Footnote 1 on page A-57.

her reason for failure to give notice, "The tax debtor, through his counsel has even expressed the fact that leaving the United States might be an option to resolving this case.—No requests for consents have been requested of the Nominees for Thomas A. Moore, Sr. M. D. because it is believed that the tax debtor and/or his Nominees would move any and all assets beyond the reach of the Government,—" Plaintiff challenges the truth of the former assertion and the logic of the second.[2]

Subsequent to the entry and seizure, Mrs. Moore filed a Wrongful Levy Suit. Agent Brenda Felger and Agent Eugene Nepveaux appeared at depositions to give testimony as to all the facts relied upon by the government to conclude that Mrs. Moore was the nominee of the Plaintiff as to the items listed above (as well as a plethora of other items seized). Agent Felger's Testimony (Exhibit #1) revealed that she made no attempt to establish a basis for her conclusion that Mrs Moore was the nominee of the Plaintiff. She further stated she made no efforts to verify in any way the basis relied upon by District I R S Counsel in it's recommendation to proceed on a nominee theory. Her testimony in Judge Robert Collins court on March 7, 1990 (Exhibit #3) revealed she was placed on the case the previous Wednesday, February 28, 1990, when she replaced Agent Nepveaux who had been on the case since April, 1987.

Agent Felger admitted she had no special training in Nominee or Transferee theory and had but five years experience, yet she proceeded to file a lien against the pro-

---

Footnote 2 on page A-57.

perty of Mrs. Moore on March 14, 1990, after only two weeks on the case. This is particularly noteworthy in the face of the deposition testimony of Agent Nepveaux (Exhibit #2), an Agent with twenty years experience. In his testimony (Page 63, line 16 through page 66, line 25), Mr. Nepveaux admits there was severe departure from the normal procedure taken when the I R S feels that a third party is holding the property of a taxpayer. When asked. "Q.— That was not done in this case, was it? A. **No.** Q. Can you tell me why? A. **No, I don't know why.** He further answered as follows (Page 223, line 7 to 24): Q. What is the basis for the Government to claim a lien on property that Mrs. Moore acquired prior to December 31, 1979 or the basis for the Government saying that Mrs. Moore is the nominee of Thomas A. Moore for the property she acquired prior to December 31, 1979? A. **I guess I really don't know.** Q. Does anybody in the Government know to your knowledge? A. **I guess I don't know the answer to that question either.** When asked specificly about facts relied on in the assertion that Mrs. Moore's house was at issue (Page 31, line 23, through Page 33, line 18), Mr. Nepeaux answered, "Well, all I am saying here is that **I felt like** a lien against Dr. Moore was effective against the property. That is really what I am saying. ***Whether that translates into some kind of nominee theory, I don't know.***" [3,4]

Plaintiff avers that if Agent Nepveaux had no knowledge of what constituted a nominee theory he could hardly have made a meaningful recommendation to District Counsel. Further, if Agent Felger conducted no investiga-

---

Footnote 3 on page A-57.
Footnote 4 on page A-58.

tion of her own, on what did she rely for the allegations made in her Affidavits. She could only rely on the opinion of District I R S Counsel. Plaintiff believes the opinion of District I R S Counsel given to Agent Felger that she had the authority to proceed with the nominee theory against the property of Mrs. Moore was an administrative decision and the facts relied upon by District Counsel should be subject to Discovery.[4,6] These decisions are not protected under the Attorney-Client Privilege because District Counsel is not acting as the Attorney for the Agents, but in this case is only a link in the chain of procedural steps. Indeed, if those decisions made by Counsel in any administrative capacity shielded those who acted on them, it would open a Pandora's box of mischief and mayhem.[5]

Plaintiff avers that it is exactly that mischief and mayhem that prevailed in this case. It is the belief which is the basis of his complaint that the actions were, "knowing, malicious, deliberate, and intentional misconduct—and/or—willful and wanton misconduct—and/or—grossly negligent misconduct—of the defendants—". Plaintiff avers that discovery or testimony at trial is the only manner in which to discover what thinking and communication took place between the principle defendants who took part in formulating those documents which abused the Court's power through the tainted *Writ of Entry*. Defendants Brenda Felger, her supervisor, Henry McKinell, Eugene Nepveaux, Stevens Moore, and Jill Ondrejko all were in

---

Footnote 4 on page A-58.
Footnote 5 on page A-58.
Footnote 6 on page A-60.

position to recognize that they were in uncharted waters in seeking their Writ of Entry not against the Plaintiff, but against Mrs. Moore as his Nominee.[3 & 6]

Plaintiff avers that it is germane to point out that Mrs. Moore's Wrongful Levy Suit ended in settlement when her counsel asked to be removed from her case after she had been drained of her financial resources and she was emotionally exhausted. After she was subjected to over 400 pages of deposition testimony (Exhibits 13 & 14) to substantiate her claims, and her eighty year old mother was called to give corroborating testimony (Exhibit 17), did the Government state to her mother that Mrs. Moore could, "pick up her grandfather's gold-handled unbrella" which, though engraved, "Samual Baker Heaslip, April 7, '06" the Government had seized and held as property she was holding for the Plaintiff. The government returned to her the majority of the items which were so rudely torn from her, including her household furniture, all of her jewelry, her GMC Van, her family heirlooms, her silver baby cup engraved "Lynn", as well as numerous items of women's apparel, which had been seized in the "feeding frenzy" which took place under this *Writ of Entry* on March 29, & 30, 1990.

In light of the above, the Plaintiff asks the Court to consider:
The government did not present sufficient information on which the Magistrate could order a *Writ of Entry* based on probable cause. The property which Agent Felger specified in the application for the Writ of Entry was not subject to

---

Footnote 3 on page A-57.
Footnote 6 on page A-60.

the execution of a levy absent proof that Mrs. Moore was the nominee of the Plaintiff. There must be probable cause to determine that the property belonged to the Plaintiff. The lack of probable cause renders the *Writ of Entry* illegal.

Wherefore the plaintiff prays that the Court will reconsider and find that the Defendants obtained the Magistrate's concurrance through subtrafuge and misrepresentation thereby tainting the *Writ of Entry* which made their entry into his home illegal.

Respectfully submitted:

/s/ Thomas A. Moore, M.D.

Thomas A. Moore, M.D.
Pro Se
502 Barrow Street
Houma, Louisiana 70360
Phone: (504) 876-2222

FOOTNOTES

1 Attesting to Agent Fleger's lack of investigation and knowledge is the fact that the Toyota Automobile was not the property of Mrs. Moore or the Plaintiff, but leased from Toyota Motor Leasing. As such, it had no seizure value and should have been exempt from seizure. When evidence was given as to these facts to Agent Nepveaux during the seizure, he paused, and then stated that, "This seizure covers even the use of things." After Toyota Motor Leasing requested the release of their property from Agent Felger, she only agreed to an administrative release if the company agreed to terminate the lease.

2 Plaintiff catagoricly denies ever having considered or verbalizing any intent to flee the United States. He has been engaged in the practice of medicine in New Orleans and Houma continuously since 1963. He holds no License to practice medicine in any other state or country. He was 55 years of age at that time Agent Felger, in her fantasy, feared he would escape her efforts.

As to moving assets should notice be given, it strains the imagination to concoct a scenerio in which the Plaintiff or Mrs. Moore would move a house and all it's furnishings, various motor vehicles which must be registered and insured, and all the other items beyond the reach of the Government and still benefit in any way from their ownership.

3 102 S.Ct. 2727 (1982) Justice Brennan: "I agree with the substantive standard announced by the Court today, imposing liability when a public official defendant 'knew or

should have known' of the constitutionally violative effect of his actions. Ante, at 2737, 2739. This standard would not allow the official who actually knows that he was violating the law to escape liability for his actions,..." "...Thus the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies 'across the board' to all 'government officials performing discretionary functions.' I write separately only to note that given this standard, *it seems inescapable to me that some measure of discovery may sometimes be required to determine exactly what a public-official defendant did 'know' at the time of his actions.*" 102 S.Ct. at 2939-2740.

4 Agent Nepveaux, in the summer of 1987, had several meetings with an attorney and an accountant who were representing Mrs. Moore after Agent Nepveaux had voiced his personal theory that he believed *all* of Mrs. Moore's property was really the property of the Plaintiff. After presentation of evidence and discussion of the facts, (including taking Agent Nepveaux through the house owned by Mrs. Moore), the C.P.A., Mr. Barry Melancon, wrote to Agent Nepveaux (Exhibit #7) stating that representatives of Mrs. Moore would want to speak with District I R S Counsel in the event any of Mrs. Moore's property was at issue, and asked for a listing of any such property. Agent Nepveaux never responded to that letter.

5 In 1985, Agent Cyrus Fanguy sent out in excess of eleven hundred (1100) Summonses in relation to his work on Plaintiff's account. Summonses were sent on the Plaintiff to every Physician and every Attorney listed in the telephone directories of Houma, Thibodaux, and Raceland; to every

Psychiatrist listed in the Greater New Orleans telehpone directory, and to all insurance companies doing business in the State of Louisiana.

Summonses were sent to every Bank and S & L listed in the telephone directories of Houma, Thibodaux, Raceland, and Greater New Orleans on the Plaintiff, his three children individually, and Mrs. Moore.

Agent Fanguy was questioned about those summons sent out on Mrs. Moore in Deposition April 10, 1991 (Exhibit #18). From Page 24, line 22 through Page 29, line 17, Agent Fanguy was questioned as to the propriety of his action, and whether he had any reasonable expectation of gaining information, and in fact, had he learned anything as a result; e.g.,;

Page 27, line 13 through Page 29, line 8:

Q. What was your basis in sending these summonses out to all these various financial institutions, because I think if you look at the summonses, every one of them is to a financial institution.

A. Well, it would be to discover if there was some information that was releavant to the taxpayer, M

Q. Did you have any facts that led you to believe that these institutions, these financial institutions, might have facts in connection with your audit of Mrs. Moore's income tax return?

A. Well, let me say this: *These summonses were isued under the instruction of our district counsel,* so I would not feel like I would be able to respond

completely to your question without discussing it with the individuals who were also involved in issuing these summonses.

This was not a unilateral thing that just I did. There were other people involved in the issuance of the summonses.

Q. Is it usual to send out this many summonses in an audit of a case?

A. I don't know if you can qualify "usual" or not.

Q. Well, let me ask you this: *In your 20 years of experience as an examination agent, have you ever sent out this many summonses in the examination of one individual taxpayer?*

A. I don't know if that's a fair question or not. *I mean, I do what I'm instructed to do.* If I'm instructed to issue two summonses, I will issue two summonses. If I'm instructed to issue 200, I'll issue 200. I don't think that's a fair question, because *I'll do what I'm told.*

6 "This case, however, while civil in nature is not between private parties, and there is no analogous deterrents to, or remedies against, Government violations to the Fourth Amendment. The prohibition against unreasonable searches and seizures is directed against governmental action. Absent an exclusionary rule, the government would be free to undertake unreasonable searches and seizures in all civil cases without the possibility of unfavorable consequences," *Pizzarello* at 408 F.2d 586

APPENDIX E

ORAL STATEMENT IN SUPPORT OF BRIEF

I am not here today to argue the points advanced in my brief. I will let it stand on it's own merit.

What is far more basic here is our heritage of ideas and ideals. I do not pretend to be acquainted with all the works of those whose thoughts and writings have g[illegible] rise to the glorious values to which we are heirs in our Western culture.

The ideas of which I speak have to do with how individuals should best behave toward one another in a just society. These ideas cut across lines of nationality race, gender, time, and even creed. I know of nowhere that one may find a better summation of these ideas and ideals than that which our forefathers left us in "The Constitution of the United States" and the "Bill of Rights"

Lincoln borrowed from Christ's teaching, that, "a house divided against itself cannot stand", when he stated that our Nation "Could not survice half slave, and half free. I would carry that a step further today and state," Our Nation cannot survive a system, which, for the sake of expediency, creates a code to measure those who labor for the government differently than those whose labors support the government.

The exercise of power has long been known to have an intoxicating effect on even the wisest among us, and our forefathers saw fit to set up a system of checks and

balances to minimize the human tendency that some among know better than our fellows what is best for them.

The most moderating branch of our bodies of government is the Judicial Branch. Alexander Solz Stated, "Perhaps the last fruit of a civilized society is a G O O D Judicial System.' "

The Defendants and the Government are asking the Court today to condone the actions of Certain Individuals who work for the Government, who, claiming to need the Court's power and authority to expedite their goals, have clearly acted in a manner which denies others of the Rights the Court is sworn to protect. The Defendants/Government is asking the Court at best to be Schizophrenic, or at worst, to simply cozy up to it in bed, and look the other way, and no one will be the worse for it. No one that is, except the individuals whose Rights the Court is sworn to protect.

In this case, the Defendants/government has the effrontery to ask the Court to consider the fact that Mrs. Dorothy Lynn Moore, as an innocent third party against whom the Defendant government employees proceeded so callously, should have had to bear the burden of proof that she owned her own baby cup.

They ask the Court to sanction by silence the fact that the Court's power was gained by deceit and manipulation.

If the Defendants or the Government feels slandered by these allegations of the Plaintiff, then all the more reason they should want to prove themselves innocent by addressing the allegations in open Court.

Dorothy Lynn Heaslip Moore is no longer my wife. We were divorced in December, 1991. Having been so traumatized and fearing more of the same it she remained close to the Plaintiff, she had to distance herself to the detriment of us both.

She stated to me her abiding fear, "*They* can do *anything* they want."

I ask the Court today to demonstrate that the founding fathers wrote only one Constitution to apply to all of us. I ask the Court to affirm that the Bill of Rights, particularly the Fourth Amendment applies to the Plaintiff, and the Defendants' actions should stand inspection in the light of day.

Let Dorothy Lynn Moore, as well as all others who may live in fear, know that under our Constitution not even the mightiest, "Can do anything they want" to even the weakest among us.

APPENDIX F

MINUTE ENTRY
HEEBE, J.
AUGUST 5, 1992

FILED
AUG 5 '92

THOMAS A. MOORE, M.D. CIVIL ACTION

VERSUS NO. 92-367

BRENDA FELGER, ET AL. SECTION "B"

This cause came on for hearing on July 22, 1992 on the motion of defendants, Robert Singleton, Rebecca Patton, and James Valentine, to dismiss pursuant to Fed.R.Civ.P. 4(j). There being no opposition by *pro se* plaintiff, Thomas A. Moore, M.D., to the motion of defendants, Robert Singleton and Rebecca Patton, to dismiss, the Court granted the motion as to those two defendants.

However, at the hearing on the motion, plaintiff represented to the Court that defendant, James Valentine, had been personally served on July 21, 1992. The Court thus took Mr. Valentine's motion to dismiss under advisement.

The Court, having heard the arguments of counsel and having studied the legal memoranda submitted by

DATE OF ENTRY AUG 5 1992

defendants, and the exhibits filed by plaintiff, including the return of summons on defendant, James M. Valentine, is now fully advised in the premises and ready to rule. Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendant, James Valentine, to dismiss pursuant to Rule 4(j), be, and the same is hereby DENIED.

REASONS

Plaintiff, Thomas A. Moore, M.D., commenced this action by filing a *pro se* complaint on January 29, 1992. Defendants, Robert Singleton, Rebecca Patton, and James Valentine, subsequently filed a motion to dismiss on the ground that plaintiff had not effected service of process and, therefore, the Court lacked personal jurisdiction over them. On June 3, 1992, the Court entered an order denying the motin to dismiss without prejudice to file a motion under Rule 4(j).

On June 18, 1992, defendants filed a motion to dismiss pursuant to Rule 4(j). Defendants allege that more than 120 days have elapsed since the filing of plaintiff's complaint, and plaintiff has not effected service of process upon them. Defendants thus contend that this action should be dismissed pursuant to Rule 4(j).

Plaintiff has not filed a written opposition to defendants' motion to dismiss. However, at the hearing on July 22, 1992, he orally opposed Mr. Valentine's motion to dismiss. Plaintiff explained to the Court his "conscientious efforts" to serve Mr. Valentine, and informed the Court

that Mr. Valentine was finally served the previous day.

On July 28, 1992, plaintiff filed his return of service on Mr. Valentine and his other unsuccessful mailings to this defendant to document his attempts at service. The return of the summons shows that Mr. Valentine was personally served on July 21, 1992.

Fed.R.Civ.P. 4(j) states, in pertinent part:

> If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

Rule 4(j) mandates dismissal upon a finding that service has not been made on the defendant within one hundred and twenty days unless "good cause" is shown." McDonald v. United States, 898 F.2d 466, 467 (5th Cir. 1990). "Good cause" requires "some showing of 'good faith . . . and [a] reasonable basis for noncompliance within the time specified." *Id., citing* Winters v. Teledyne, 776 F.2d 1304, 1306 (5th Cir. 1985).

It is clear that service was not made upon Mr. Valentine within 120 days after the filing of the complaint. Thus this Court must decide whether plaintiff has shown good cause why such service was not made timely.

According to the exhibit filed in the record as Document # 25, plaintiff first mailed the summons and complaint to Mr. James Valentine, Field Branch Chief, 501 Magazine Street, New Orleans, Louisiana 70130, postmarked February 10, 1992. This mailing was returned to sender based on "insufficient address."

On February 24, 1992, the summons and complaint were delivered by certified mail to the following address: James Valentine, Field Branch Chief, Internal Revenue Service, 7th Floor, 501 Magazine Street, New Orleans, Louisiana 70130. The return receipt was signed by Eugene E. Thompson, Jr.

Plaintiff testified at the hearing that Mr. Valentine never responded to that summons, and so he attempted personal service on Mr. Valentine through a process server. On April 29, 1992, a process server attempted to serve Mr. Valentine at the I.R.S. office in New Orleans, The process server noted that service was not made because Mr. Valentine "retired from I.R.S."

Plaintiff explained to the Court that he did not have another address for Mr. Valentine until "very recently when in communication with one of defendants' attorneys, he found his home address."

On July 21, 1992, the process server served Mr. Valentine personally at 7321 Briar Heath Drive, New Orleans, Louisiana 70128.

Based on the diligent attempts at service by this *pro se* plaintiff, and the exhibits filed in support to document

these efforts, the Court finds that plaintiff has shown "good faith" and a "reasonable basis" for not serving Mr. Valentine within the one hundred and twenty-day period. *McDonald*, 898 F.2d at 467. Thus, the Court concludes that good cause has been shown in this case to extend the time to effect service.

Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendant, James Valentine, to dismiss pursuant to Rule 4(j), be, and the same is hereby DENIED.

/s/ Frederick J Heebe

UNITED STATES DISTRICT JUDGE

APPENDIX G

MINUTE ENTRY
HEEBE, J.
MARCH 26, 1993

FILED
MAR 29 '93

THOMAS A. MOORE, M.D. CIVIL ACTION

VERSUS NO. 92-0367

BRENDA FELGER, ET AL. SECTION "B"

This cause came on for hearing on a previous day on the motion of defendants, Brenda Felger, Steve Fanguy, John Reedy, Michelle Babin, Dina Bonvillain, Angela Camille, Tina Samanie, Cyrus Fanguy, Bill Algu, MacDuffie Herrod, Denise Adams, Joe Burchis, Eugine Napveaux, Henry McKinell, Jeff Daniels, James M. Valentine, Phillip Guillot, Louis Oubre, Stevens Moore, Jill Ondrejko, for summary judgment on the ground that this action is barred by defendants qualified immunity.

The Court, having heard the arguments of counsel and having studied the legal memoranda submitted by the parties, rules from the bench, DENYING defendants' motion for summary judgment.

A denial of a motion for summary judgment for want

Date of Entry MAR 29 1993

of qualified immunity fits within the small class of interlocutory decisions qualifying for appellate review. Mitchell v. Forsyth, 472 U.S. 511, 527 (1985). Therefore, this Court is issuing this minute entry stating its reasons for denying defendants' motion for summary judgment. Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, Steve Fanguy, John Reedy, Michelle Babin, Dina Bonvillain, Angela Camille, Tina Samanie, Cyrus Fanguy, Bill Algu, MacDuffie Herrod, Denise Adams, Joe Burchis, Eugene Nepveaux, Henry McKinell, Jeff Daniels, James M. Valentine, Philip Guillot, Louis Oubre, Stevens Moore and Jill Ondrejko, for summary judgment, be, and the same is hereby DENIED for the following reasons.

REASONS

This is a suit for damages filed on Jaunuary 29, 1992 by a delinquent taxpayer against certain IRS agents and other federal defendants. Plaintiff, Thomas A. Moore, M.D. (hereinafter "Moore"), is indebted to the United States in excess of $1 million for federal income tax liabilities for the years 1980-84 and 1986-89. In an attempt to collect these tax liabilities, the United States filed an *ex parte* motion, listing various tangible property items such as furniture, jewelry and a stereo, seeking authorization for IRS agents to enter Moore's home and effect a tax levy on those items. On March 22, 1990, Magistrate Judge Alma Chasez signed an Order for Entry on Premises to Effect Tax Levy which authorized any revenue officer or other authorized employee of the IRS to enter Moore's home "to make such

search as is necessary in order to inventory, levy, and seize property and rights to property belonging to said tax debtor to which the federal tax lien applies."

IRS agents Steve Fanguy and Cyrus J. Fanguy entered Moore's home on March 29, 1990. The agents seized Moore's furniture, stereo, and other items listed in the order, for entry. In addition, the agents found some private files and records. The agents contend that they believed the records were evidence of perjury because the agents assert that plaintiff, while under oath, had denied the existence of the records. Group Manager Henry F. McKinell ordered the agents to seize the records, and Steve Fanguy began to remove the records. Defendants justify removal of the records as evidence of a crime found in plain view during a lawful search.

Plaintiff argued with the agents then and still contends that he never denied that the records existed, and that, therefore, the records were not evidence of the crime of perjury. Plaintiff also contends that the records do not fall within the plain view exception to the warrant requirement.

At some point during or after the removal of the records from the plaintiff's residence, McKinell contacted Stevens Moore, an IRS lawyer, and Jill Ondrejko, an Assistant U.S. Attorney. Stevens Moore and Ondrejko contacted Stephen Boyd, an IRS special agent for the criminal division. Boyd obtained a search warrant from Magistrate Judge Ivan Lemelle which authorized Boyd to search and seize accounts receivable from Moore's medical practice, and/or patient billing information. There is a

dispute as to what happened next.

Defendants contend that, once they decided to obtain a search warrant, they returned the records to their original location. Then Ordrejko and Stevens Moore took the search warrant to plaintiff's home, and Special Agents Philip Guilott and Louis Oubre inventoried and seized the records.

Plaintiff maintains that a search warrant was obtained as a pretext to cover up the fact that the records had already been obtained, albeit through illegal means. Plaintiff argues that the records were *not* returned to their original location before the search warrant was executed.

Plaintiff alleges in the complaint that defendants illegally and unlawfully entered his home. Plaintiff also alleges that the defendants conducted a lengthy, exhaustive and destructive search of his things, including his private books and papers. Finally, plaintiff alleges that defendants seized and carried away his books and papers in contravention of the constitution and the laws of the United States and Louisiana. If the Court determines that the defendants' entry into Moore's home was lawful, plaintiff argues, alternatively, that the agents exceeded the scope of their authority; plaintiff contends that defendants' search and subsequent seizure of his files and records were not authorized by the order for entry signed by magistrate Judge Chasez. Therefore, plaintiff maintains, the information gained from the file and records to obtain the search warrant could not be used to establish probable cause.

Defendants filed a motion to dismiss plaintiff's claims, or, in the alternative, for summary judgment. On June 2, 1992, the Court denied defendants motion to dismiss and granted defendants' motion for summary judgment on the issue of whether defendants legally entered plaintiff's premises. Doc. No. 16. In the same order, the Court denied without prejudice defendants' motion for summary judgment as to the issues of qualified immunity and prescription. *Id.*

This case is before the Court now on defendants' second motion for summary judgment on the ground that this action is barred by defendants' qualified immunity. Plaintiff again contends that the defendants are not entitled to qualified immunity in this case.

Defendants assert that they are shielded from suit by qualified immunity. In asserting qualified immunity as a defense, a defendant official must plead that he acted in good faith and establish that he was acting in his official capacity and within the scope of his discretionary authority. Salas v. Carpenter, 980 F.2d 299, 306 (5th Cir. 1992). "An official acts within his discretionary authority when he performs non-ministerial acts within the boundaries of his official capacity." Cronen v. Texas Dept. of Human Services, 977 F.2d 934, 939 (5th Cir. 1992).

The first issue this Court must address is whether defendants pled and established that they acted in good faith and within their discretionary authority. Defendants contend that they entered plaintiff's house on March 29, 1990, pursuant to the order for entry on premises to effect tax levy, which was issued by Magistrate Judge Alma

Chasez on March 22, 1990. Defendants maintain that they seized the records at issue because they believed that the records fell within the plain view exception to the warrant requirement. Defendants contend that they returned the records to plaintiff's home, and later seized the records pursuant to a search warrant signed by magistrate Judge Lemelle.

This Court finds that defendants pled that they acted in good faith and within their discretionary authority. Defendants entered the house pursuant to an order for entry. Defendants claim that their initial seizure of the files was lawful because they had probable cause to believe the files were evidence of a crime and because the plain view exception to the warrant requirement applied. Without addressing the merits of defendants' claims, this Court finds that defendants satisfied their burden of proff on this initial issue.

Qualified immunity shields conduct not violative of clearly established constitutional or statutory rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Austin v. Borel, 830 F.2d 1356, 1358 (5th Cir. 1987). In order for a plaintiff to overcome a defendant's claim of qualified immunity, he must claim that the defendant violated a right which is sufficiently clear that a reasonable official would know whether he is violating that right. Anderson v. Creighton, 483 U.S. 635, 640 (1987). Thus, once defendants satisfy their burden of asserting the affirmative defense of qualified immunity, the plaintiff has the burden of proving that his allegations, if accepted as true, state a claim for violation of a clearly established constitutional right.

Siegert v. Gilley, ___ U.S. ___, 111 S.Ct. 1789, 1792 (1991); *Salas,* 980 F.2d at 304.

Thus, the second issue the Court must determine is whether the plaintiff alleged a violation of a clearly established constitutional right. "When a defendant raises a qualified immunity defense, 'whether the conduct of which the plaintiff complains violated clearly established law' is an essentially legal question.' " Pfannstiel v. City of Marion, 918 F.2d 1178 (5th Cir. 1990), *quoting* Michell v. Forsyth, 472 U.S. 511, 526 (1985). the issue of whether the defendant in fact committed the alleged acts is a factual question; the burden is on the plaintiff to raise a genuine issue in order to avoid summary judgment in defendant's favor. *Mitchell,* 472 U.S. at 526.

Plaintiff in this case contends that the defendants violated his fourth amendment rights. Plaintiff alleges two alternative causes of action: (1) that defendants illegally entered his home, and/or (2) that defendants exceeded the scope of their authority. The Court granted defendants' motion for summary judgment as to the illegal entry allegation. Doc. No. 16. However, the Court denied defendants' motion to dismiss the scope of authority cause of action. *Id.* Therefore, whether the latter claim states a violation of the fourth amendment is the issue currently before this Court.

The plaintiff alleged that the defendants searched and seized records and files that were not specified in, and were beyond the scope of the writ of entry. In effect, as to the seizure of the unspecified records, plaintiff alleges a warrantless search without probable cause and exigent cir-

cumstances. This Court finds that plaintiff's claim alleges a violation of a clearly established constitutional right, the fourth amendment.

In addition, this Court finds that the plaintiff pled sufficient facts supporting his claim that defendants in fact committed the fourth amendment violation. Plaintiff alleged that the writ of entry did not list the records or the places they were found. Plaintiff also alleged that defendants could not determine the contents of the files without opening them. Finally, plaintiff alleged that the files were seized and were not returned to their original location before the defendants obtained a search warrant. Plaintiff has met his burden of alleging a violation of a clearly established constitutional right.

If the Court decides that plaintiff's allegations do not state a constitutional claim, then that is the end of the inquiry; the defendant is entitled to qualified immunity in the case. However, where, as here, the Court finds that plaintiff's allegations *do* state a constitutional claim, then the third step is to examine the objective reasonableness of the defendant official's conduct. *Salas,* 980 F.2d at 306.

The Fifth Circuit follows this rule: "If reasonable public officials could differ on the lawfulness of the defendant's actions, the defendant is entitled to immunity." *Id.* Or, stated another way, the defendants are entitled to immunity if "their actions could reasonably have been thought consistent with the right they are alleged to have violated." Duckett v. City of Cedar Park, Texas, 950 F.2d 272, 279 (5th Cir. 1992), *quoting Anderson,* 483 U.S. at 638. The plaintiff has the burden of showing that there is a fact-

ual dispute as to whether the defendants' conduct was reasonable in light of clearly established law. *Pfannstiel*, 918 F.2d at 1183.

Defendants argue that their seizure of certain records from an office in plaintiff's home did not violate plaintiff's fourth amendment rights because the seizure was proper under the "plain view" doctrine. Horton v. California, 496 U.S. 128, 142 (1990); Coolidge v. New Hampshire, 403 U.S. 443, 465-471 (1971). In order to establish that a seizure was legal under the plain view doctrine, defendants must prove: (1) the seizing officers were located in a place where they had a right to be; (2) it was immediately apparent to the officers that the items seized were evidence of a crime, contraband, or otherwise subject to seizure and (3) the officers had a lawful right of access to the object itself. *Horton*, 496 U.S. at 136-137.

As to the first requirement, in granting defendants' motion for summary judgment, this Court already found that the officers lawfully entered Dr. Moore's home. Doc. No. 16. That ruling applies, of course, in deciding the pending motion.

The next issue the Court must confront is whether it was immediately apparent to the officers that the items seized were evidence of a crime contraband, or otherwise subject to seizure. Defendants contend that defendants, Revenue Officer Steve Fanguy and Revenue Agent Cyrus J. Fanguy, found records which Dr. Moore, while under oath, denied having. Defendants claim that the two men recognized that the records were evidence that plaintiff had committed the crime of perjury.

Plaintiff, on the other hand, argues that the records are not evidence of criminal wrongdoing at all, and that, consequently, the records did not create an immediate appearance of criminal wrongdoing. Plaintiff argues, first, that the records were not evidence of perjury because plaintiff had never denied their existence, contrary to defendants' contention, but had instead asserted that the information in the records was protected by the doctor-patient privilege under Louisiana law. Plaintiff argues that he *refused* to produce the records, rather than merely *failing* to produce them.

Second, Plaintiff argues that it could not have been immediately apparent that the records were subject to seizure because it was necessary for defendants to open the manila folders containing the records in order to discover what they were; the records themselves were not in plain view. Under Arizona v. Hicks, 480 U.S. 321, 325 (1987), if the defendants opened the files to ascertain their contents, then the search does not fall into the plain view exception to the warrant requirement. In *Hicks*, police officers entered an apartment after a shooting occurred there. *Id.* at 323. While in the apartment searching for the gunman, victims, and weapons, one of the police officers moved some of the components of a stereo in order to read and record the serial numbers. *Id.* The Court held that moving the components constituted a separate search unjustified by the original exigent circumstances. *Id.* at 325. Therefore, the officer's conduct was in violation of the fourth amendment since he did not hve a warrant or probable cause to search the stereo. *Id.* at 325-26.

In *Anderson*, 483 U.S. at 641, the Court said that

good faith immunity is not lost when an officer violates the Fourth Amendment unless a reasonable officer would know that the specific conduct was impermissible. The *Anderson* Court accepted the general premise that officers are not to conduct warrantless searches unless there is probable cause and exigent circumstances. *Id.* However, whether probable cause and exigent circumstances existed was a disputed factual question which could not be resolved on summary judgment. *Id.* Similarly, in the case at hand, there is a factual dispute regarding the applicability of the plain view exception to the warrant requirement, making summary judgment inappropriate.

The issue of whether it was immediately apparent that the records were evidence of perjury cannot be determined on summary judgment in this case; there is a genuine dispute as to the material facts. The parties disagree as to whether plaintiff had previously denied the existance of the records and as to whether the defendants knew what information the files contained before opening them.

The third prong of the plain view doctrine is whether the defendant had a lawful right of access to the records. The defendant claim that once they were in Moore's house pursuant to a writ of entry they had a right to seize any property necessary to effect the tax levy.

Plaintiff asserts that the defendants did not have a lawful right of access to the records. Plaintiff relies on the fact that the writ of entry did not specify: (1) "records"; (2) the offices of either Dr. Moore or Dorothy Lynn Moore, in one of which the records were located; or (3) the office

furnishings where the records were located. This Court finds that plaintiff has alleged sufficient material facts to create a genuine dispute as to whether the defendants had a lawful right of access to the records.

Although the issue of whether a defendant is entitled to qualified immunity is a question of law, that issue requires the preliminary determination of underlying questions of fact such as whether the officers' conduct was objectively unreasonable, that is, whether it violated clearly established constitutional rights of which a reasonable person would have known. The Court finds material factual disputes regarding: (1) whether it was immediately apparent that the records were evidence of a crime; and (2) whether the defendants had a right of access to the records. Because of those factual disputes, this Court cannot decide on summary judgment whether defendant's conduct was objectively unreasonable. Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendants, Brenda Felger, Steve Fanguy, John Reedy, Michelle Babin, Dina Bonvillain, Angela Camille, Tina Samanie, Cyrus Fanguy, Bill Algu, MacDuffie Harrod, Denise Adams, Joe Burchis, Eugene Nepveaux, Henry McKinell, Jeff Daniels, James M. Valentine, Philip Guilott, Louis Oubre, Stevens Moore and Jill Ondrejko, for summary judgment on the ground that this action is barred by qualified immunity, be, and the same hereby DENIED for the above stated reasons.

/s/ Frederic J. Heebe

UNITED STATES DISTRICT COURT

APPENDIX H

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF DENISE ADAMS

DENISE ADAMS declares:

1. My name is Denise Adams. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. As of March 29, 1990, I had been a Revenue Agent for two and a half years.

2. As a Revenue Agent my primary duty is to examine federal income tax returns. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service.

GOVERNMENT
EXHIBIT
C

3. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property from the residence located at 207 Oak Alley Drive, Houma, Louisiana, in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

4. I arrived at Dr. Moore's residence at approximately 10:00 A.M. I left for lunch at approximately 12:30 P.M. and returned at approximately 1:30 P.M. I left the residence at approximately 9:00 P.M.

5. While at the residence, I assisted the Revenue Officers inventory the property being seized. I inventoried items in the den/living room, master bedroom and wine room, such as furniture, liquor, paintings, etc., on ruled paper. I also assisted in transferring inventoried items from the ruled paper to Forms 2433.

6. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of January, 1993.

/s/ Denise Adams

DENISE ADAMS

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF WILLIAM O. ALGU

WILLIAM O. ALGU declares:

1. My name is William O. Algu. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. I have been a Revenue Agent for the past six years.

2. As a Revenue Agent my primary duty is to examine federal income tax returns. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service.

3. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property from the residence located at 207 Oak Alley Drive, Houma, Louisiana, in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

4. I arrived at Dr. Moore's residence at approximately 11:00 A.M. I departed the residence at approximately 10:00 P.M.

5. While at the residence, I assisted the Revenue Officers inventory the property being seized. I inventoried items in the living and dining rooms. I also assisted in transporting guns, furs and several cases of wine seized from Dr. Moore's residence to the office of the Internal Revenue Service in Houma.

6. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of January, 1993.

/s/ William O. Algu

WILLIAM O. ALGU

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF DINA BONVILLAIN

DINA BONVILLAIN declares:

1. My name is Dina Bonvillain. I am a Revenue Officer Aide with the Collection Division of the Internal Revenue Service ("IRS"). My post of duty is in Houma, Louisiana. I have been a Revenue Officer Aide since December, 1988.

2. My duties as a Revenue Officer Aide include assisting the Revenue Officers in my group in the performance of their duties.

3. On March 29, 1990, I was assigned to assist Revenue Officer Brenda Felger in her attempts to collect tax liabilities of Dr. Thomas A. Moore.

4. In the morning of March 29, I went to the Terrebonne Parish Courthouse to file several notices of federal

tax liens. After I filed the liens, I went to the IRS office in Houma. I then went with Revenue Officer Jeff Daniel to Bayou Oaks Hospital for the purpose of locating and seizing a Mercedes Benz belonging to Dr. Moore.

5. I arrived at Dr. Moore's residence at approximately 11:00 a.m. I assisted in inventorying items in the living room area. I was also assigned to run various errands during the day.

6. Under the direct instructions of my Group Manager, Henry McKinell, I went to the IRS office in Houma to copy the contents of a file folder that held invoices, appraisals and other information relating to assets owned by Dr. Moore. I returned the file folder to Mr. McKinell at the residence of Dr. Moore.

7. Later on in the evening, I assisted Special Agents Louis Oubre and D. Philip Guilott in indexing documents found at the residence. The extent of my involvement was limited to listing documents on sheets of paper and assigning them a letter for the purpose of indexing. I did not review the documents but merely wrote down information dictated by the Special Agents. I wrote the information by hand on paper and later began to type it. I did not finish the typing. It was finished by Revenue Agent Angela Camille.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of January, 1993.

/s/ Dina Bonvillain

DINA BONVILLAIN

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF JOE BRUCHIS

JOE BRUCHIS declares:

1. My name is Joe Bruchis. I am a Group Manger with the Examination Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. I have been a Group Manager for approximately five years.

2. As a Group Manager my primary duties are to supervise the work of the Revenue Agents in my group and to evaluate their performance. As part of my duties, I am also required to perform other duties as assigned by the internal Revenue Service.

3. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property from the residence located at 207 Oak Alley Drive, Houma, Louisiana, in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

4. I arrived at Dr. Moore's residence at 10:00 A.M. and left at approximately 10:00 P.M.

5. While at the residence, I identified potential assets for seizure in the master bedroom, wine closet and kitchen. I watched the movers load items into the moving van to ensure that no valuables were stolen. I also loaded boxes of wine and guns into my pick-up truck and transported them to the office of the Internal Revenue Service in Houma.

6. Sometime in the afternoon, I was present in Dr. Moore's home office with Revenue Officer Steve Fanguy and Revenue Agent Cy Fanguy. Our purpose for being in the office was to move desks to be loaded on the moving van. I recall that Steve Fanguy and Cy Fanguy found in the office some computer diskettes and files that appeared to be accounting records.

7. These records were boxed-up and carried outside to be loaded on the moving van. They were later returned to the house after a decision was made by I.R.S. District Counsel to obtain a search warrant. I was not involved in boxing-up and moving the records.

I declare under penaltay of perjury that the foregoing is true and correct.

Executed on this 20th day of January, 1993.

/s/ Joe Bruchis

JOE BRUCHIS

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF ANGELA L. CAMILLE

ANGELA L. CAMILLE declares:

1. My name is Angela L. Camille. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty has been in Jackson, Mississippi, since April 22, 1991. From June 28, 1982, until April 22, 1991, my post of duty was in Houma, Louisiana.

2. As a Revenue Agent my primary duty is to examine federal income tax returns. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property in an attempt to collect the unpaid federaal income tax liabilities of Dr. Thomas A. Moore.

3. On the morning of March 29, 1990, I went with

Revenue Officer John Reedy to Premier Bank in Houma to act as a witness while he served a levy on the bank. When that was completed, we returned to the Houma I.R.S. office. We then received instructions to go to Dr. Moore's residence at 207 Oak Alley Drive to assist in taking an inventory of household contents.

4. I believe that I arrived at Dr. Moore's residence at approximately 10:30 A.M. I left the residence around 11:00 P.M. I did leave the residence and come back a few times during the day for the purposes of taking a break, having lunch, and changing clothes.

5. While at the residence, I primarily worked with Revenue Officer Eugene Nepveaux taking inventory of the contents of one of the bedrooms. I recall taking inventory on a number of hand guns, rifles and shotguns in addition to some coins. Later on, I assisted several I.R.S. employees in taking an inventory of china and crystal in the dining room and in the den. I did not seize any of the items. I merely acted as an assistant who primarily documented items eventually removed from the premises by others. What I did was list items on a legal pad and eventually recopy these items to whatever form it is that the Collection Division uses to list items seized.

6. I recall typing a list of names right before my departure from Dr. Moore's residence. I do not recall any specifics, but in preparing this Declaration I contacted Revenue Officer Aide Dina Bonvillain (who is my sister) who had prepared the handwritten list of names. Mrs. Bonvillain informed me that she had written the names down as they were called out to her by other I.R.S.

employees who were boxing up files. The names on the files were being written down so that an inventory of the boxes could be kept. I typed the list so that it would be easier to read. I did not actually see the files.

7. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of January, 1993.

/s/ Angela L. Camille

ANGELA L. CAMILLE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF JEFFREY T. DANIEL

JEFFREY T. DANIEL declares:

1. My name is Jeffrey T. Daniel. I am a Revenue Officer with the Collection Division of the Internal Revenue Service. My post of duty is in Baton Rouge, Louisiana. I have been a Revenue Officer since June 10, 1984.

2. My duties as a Revenue Officer include the collection of delinquent tax accounts. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service. On March 29, 1990 I was assigned to assist in the seizure of property from the residence located at 207 Oak Alley Drive, Houma, Louisiana, in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

3. I arrived at Dr. Moore's residence at approximately 11:00 A.M. and left at approximately 11:30 P.M.

4. While at the residence, I assisted Revenue Officer Felger in the seizure of jewelry, silver bars, bottles of wine, and many other household furniture.

5. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this ____ day of January, 1993.

/s/ Jeffrey T. Daniel

JEFFREY T. DANIEL

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF CYRUS J. FANGUY

CYRUS J. FANGUY declares:

1. My name is Cyrus J. Fanguy. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. I have been a Revenue Agent for approximately 21 years.

2. As a Revenue Agent my primary duty is to examine federal income tax returns. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore. As a Revenue Agent, I had earlier been involved in an examination of Dr. Moore's tax liabilities.

3. My first recollections of the Dr. Moore case date back to early 1980. At that time, I recall hearing one of my fellow revenue agents talking about a local psychiatrist who had filed tax protester type returns and was impossible to deal with. The Dr. Moore case had been referred to my group in Houma for examination. According to the referral, Dr. Moore had been identified by the Service Center as a tax protester who had discontinued filing proper federal income tax returns after filing his 1976 return. It was later learned that Dr. Moore may have been part of an organized tax protester movement.

4. The case was originally assigned to Revenue Agent Gerald Fortier for a determination of Dr. Moore's tax liabilities for the years 1977, 1978, and 1979. I recall that Gerald was unable to get any cooperation whatsover from Dr. Moore. Gerald issued numerous summonses and made numerous third party contacts in order to conduct his examination. His efforts were fruitless due to Dr. Moore's intentional efforts to leave no "paper trail." As a last resort, Gerald completed his examination by establishing tax liabilities in accordance with a "Bureau of Labor Statistics" determination based on Dr. Moore's apparent standard of living.

5. A year or so later, the years 1980 and 1981 were assigned to another Revenue Agent in my group by the name of Billy Chapman. Billy went through the same audit procedures with identical results. In fact, it was even more difficult because Dr. Moore had been through Gerald's examination and had learned quite a bit about the I.R.S. and how it operated. Dr. Moore was again totally uncooperative and put as many obstacles as possible to in-

terfere with his examination.

6. The case was assigned to me on September 24, 1984, for the reexamination of the years 1980-1981. In addition, the subsequent years of 1982, 1983, and 1984 were picked up for examination since Dr. Moore had continued his non-filing pattern. My examination lasted until February 21, 1986, for a total of approximately eighteen months. During that period, I met with Dr. Moore on seven different occasions for the express purpose of examining Dr. Moore's records. Dr. Moore presented nothing in the line of books and records during the entire examination. I issued over 1,200 summonses to individuals, corporations, and banks in an effort to locate information which could be used to determine Dr. Moore's correct income and tax liabilities for the years 1980 through 1984. Nothing of any consequence was obtained from the summonses.

7. During the course of my examination, the Collection Division took enforcement action to collect Dr. Moore's earlier tax liabilities. After that enforcement action, Dr. Moore prepared an affidavit estimating both his income and expenses for the five year period. I transferred these figures to a Revenue Agent's Report which Dr. Moore eventually signed, and the tax liabilities were later assessed.

8. I can say without hesitation that the Dr. Moore case has been the most frustrating and outright difficult examination that I have ever been involved with in my career with the I.R.S. I have never had a case where the taxpayer worked so hard to make my job even harder.

9. On March 29, 1990, upon arrival at Dr. Moore's residence, I was instructed to assist the Revenue Officers to take inventory of assets being seized in any room of the house because every room needed to be inventoried. The first room that I assisted to inventory was the kitchen. I then moved on to the next room, which happened to be an office, to continue to inventory assets.

10. In the office, I noticed a computer on the desk and numerous computer disks lying on top of the desk. I also noticed numerous files in the drawers of a wall shelf. Revenue Officer Steve Fanguy had also found other files in the drawers of a desk. Group Manager Henry McKinell was called to the room. Upon Henry's arrival, I told him that the computer, computer disks, and files appeared to be Dr. Moore's record keeping system. I further commented that I had been told previously by Revenue Officer Brenda Felger that Dr. Moore had testified in court under oath that he had no records to submit to the IRS or the Court at the time of a hearing on the enforcement of an Internal Revenue Service summons.

11. Management made a decision to seize the computer, computer disks, and files. I then moved to another room to be inventoried, which was the study. I worked in that room for some time with other I.R.S. employees.

12. While working in the study, I was asked to go out to one the vehicles parked on the street outside Dr. Moore's residence. I believe the vehicle was one that had been driven from New Orleans by the Special Agents of the Criminal Investigation Division. Upon arriving at the vehicle, which had a carphone, I was informed that a search

warrant was being prepared by our attorneys and that certain information from me regarding the records to be seized was needed. I conveyed the information about the records found in the office to Special Agent Fred Boyd, who was in New Orleans.

13. I learned later that day that a search warrant had been secured and that the Special Agents of the Criminal Investigation Division were in the process of seizing and inventoring the files.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22 day of January, 1993.

/s/ Cyrus J. Fanguy

CYRUS J. FANGUY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF McDUFFY K. HERROD

McDUFFIE K. HERROD declares:

1. My name is McDuffie K. Herrod. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty is in Baton Rouge, Louisiana. My post of duty was formerly in Houma, Louisiana.

2. I was not involved in the seizure of any property owned by Dr. Thomas A. Moore (or anyone else) on March 29, 1990. On that date, I was on annual leave from my post of duty. I have never been to Dr. Moore's residence. I have never met Dr. Moore.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of January, 1993.

/s/ McDuffie K. Herrod

McDUFFIE K. HERROD